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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1967

No. 743

BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, AFL-CIO, and its Agent, C. R. BARTALINI; CARPENTERS UNION LOCAL No. 162, AFL-CIO, and its Agent, E. W. HONERLAH; CARPENTERS UNION LOCAL No. 828, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO; and CARPENTERS UNION LOCAL No. 1408, AFL-CIO, and its Agent, JACK WEARE,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

LEVY, DEROY, GEFFNER AND VAN BOURG,
By VICTOR VAN BOURG,
45 Polk Street, San Francisco, California 94102,
Attorneys for Petitioners.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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Petitioners Bay Counties District Council of Carpenters, AFL-CIO, and its Agent, C. R. Bartalini;

Carpenters Union Local No. 162, AFL-CIO, and its Agent, E. W. Honerlah; Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; and Carpenters Union Local No. 1408, AFL-CIO, and its Agent, Jack Weare, pray that a writ of certiorari issue to review the decision and order of the United States Court of Appeals for the Ninth Circuit, enforcing an order of the National Labor Relations Board.

CITATIONS AND OPINIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit, *National Labor Relations Board v. Bay Counties District Council of Carpenters, AFL-CIO, et al.*, ... Fed.2d ..... (CA 9, July 21, 1967), enforced *Bay Counties District Council of Carpenters, AFL-CIO, et al.*, 154 N.L.R.B. 1598 (1965). The opinion of the Court of Appeals is set forth as Appendix A hereto.

JURISDICTION

The judgment of the Court of Appeals ordering that the order of the Board be enforced was entered on July 21, 1967. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a clause in a proposed collective bargaining agreement which has no unlawful language on its

face can be deemed "per se" violative of Section 8(e) of the National Labor Relations Act of 1947, as amended (29 U.S.C.), without any evidence of any unlawful conduct whatsoever. The clause in question provides:

> "No employee covered hereby may be discharged by an individual employer for refusing to cross a picket line established by an International Union affiliated with the Building and Construction Trades Department of American Federation of Labor, or a Local Union thereof, which picket line has been authorized or sanctioned by the Local Building and Construction Trades Council having jurisdiction over the area in which the job is located and after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer at his address. This Section shall not apply to jurisdictional disputes."

STATEMENT OF THE CASE

A. Findings and Conclusions of the National Labor Relations Board.

The basic facts of this case are not in dispute. The petitioner referred to herein as the District Council is made up of constituent local unions which negotiate area-wide collective bargaining agreements. The petitioning unions were joined as respondents in the case below. Wilbur Disney operated three commonly owned businesses in the geographical jurisdiction of the district council and had been signatory to the

Carpenters Master Agreement which contained the clause referred to above. Disney subsequently refused to sign a renewal to said Master Agreement, which the unions claimed he was bound to. Nevertheless, he continued to conform his labor policies to the Agreement and continued to make contributions to welfare, pension and vacation funds, provided for in the Agreement. The union never attempted to enforce the clause in question.

In order to obtain Disney's signature on the newly negotiated contract the unions commenced picketing—the clause in question here had been in prior agreements for many years and was not a question in this activity nor was it discussed or protested by Disney.

Insofar as this appeal is concerned, the National Labor Relations Board also found that the petitioners violated Section 8(b)(4)(i) and (ii)(a) by engaging in picketing activities directed toward Disney and conditioning the cessation of picketing upon Disney signing a collective bargaining agreement containing the clause above mentioned which the Board concluded was *per se* violative of Section 8(e)[1] of the

[1]Section 8(e) provides:

"(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided,* That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work

National Labor Relations Act, as amended, even though no evidence whatsoever was introduced to show unlawful conduct with respect to the clause. Similarly there was no showing that the collective bargaining parties who negotiated the clause intended its enforcement in an unlawful manner.

The National Labor Relations Board refused to adopt certain other findings and conclusions of the Trial Examiner regarding other alleged violations of Section 8(e) and of Section (8)(b)(7)(C). Petitioners concede that the conduct directed toward other employers because Disney was working on a job was violative of Section 8(b)(4)(i) and (ii)(B), and therefore the only issue presented to the Court at this time is whether or not the language of Section XXI-A is *per se* violative of Section 8(e) of the Act, and whether conduct to obtain assent to this language is consequently violative of other provisions of the Act.

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to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection and subsection (b)(4)(B) the terms 'any employer', 'any person engaged in commerce or an industry affecting commerce', and 'any person', when used in relation to the terms 'any other producer, processor, or manufacturer', 'any other employer', or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further,* That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception."

B. Conduct of Petitioners.

Since there is no conduct in the record relevant to this issue, a violation of the Act can be found *only* if the language of the clause is found to be *per se* violative of Section 8(e). Petitioners contend that the application of the *"per se"* method of interpreting the clause *presumes* that petitioners intended an unlawful result. Such a presumption is not called for by statute.

C. Decision of the Court Below.

The Court of Appeals for the Ninth Circuit enforced the order of the National Labor Relations Board in its per curiam opinion, wherein it stated that the critical language of Section XXI-A, *although differing from language in other cases,* had the same purport as cases already decided by that Court and by the Court of Appeals for the District of Columbia Circuit.

REASONS FOR GRANTING THE WRIT

The question of whether or not the protection of an individual member's right to refuse to cross a picket line without the possibility of discharge by his employer has never been decided by this Court. Although the Court has denied certiorari in the past in cases presenting a similar problem, petitioners do not believe that it has been presented in context of this case, which must be viewed in the light of the recent decisions rejecting the mechanical *per se* violation approach (see *Houston Insulation Contractors Asso.*

v. N.L.R.B., ... US ....., 18 L.Ed.2d 389; *National Woodwork Mfrs. Asso. v. N.L.R.B.*, ... US ....., 18 L. Ed.2d 357; *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, ... US ....., 17 L.Ed.2d 681).

1. The letter and spirit of Section 8(e) of the National Labor Relations Act is not violated by contractual language which would forbid an employer from discharging an employee, but which does not prohibit other discipline of that employee, for refusing to cross a picket line which met standards of legality. The employer does not thereby cease or refrain or agree to cease or refrain from dealing with any secondary employer or person.

It was held in *Teamsters, Local 413 v. N.L.R.B.*, 334 Fed.2d 539 (CA DC 1964) that a clause of a collective bargaining agreement was violative of Section 8(e) of the Act where it provided:

> "It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a labor dispute or refuses to go through or work behind any picket line, including the picket line of Unions party to this Agreement and including picket lines at the Employer's place or places of business" (p. 542).

It was held that insofar as this language sanctioned a refusal to cross a picket line which constituted a secondary strike or boycott, it would then be authorizing a secondary strike and would *"pro tanto"* be void under Section 8(e) of the Act. This case rejected,

as did *Los Angeles Mailers Union No. 9 v. N.L.R.B.*, 311 Fed.2d 121 (CA DC 1962), the argument that such a clause protected an individual refusal to cross a line rather than Union-induced refusal. That Court did hold, however, that the clause was valid insofar as it upheld an employee's right to refuse to cross a picket line in connection with a primary dispute at the contracting employer's premises or where the conditions expressed in the proviso to Section 8(b)(4) were present at a picket line of the premises of another employer. This Court denied certiorari in the *Teamsters Local 413* case, *supra*.

The clause in the instant case is distinguishable from the provision in the *Teamsters Local 413* case in many instances as it is from all of the reported cases which petitioners have been able to find. The Court's attention is drawn to the fact that in the *Teamsters Local 413* case, *supra*, as in *Teamsters Local 386*, 152 N.L.R.B. No. 83 (1965), *Teamsters Local 695*, 152 N.L.R.B. No. 55 (1965), *Teamsters Local 696*, 149 N.L.R.B. No. 3 (1964), *Hod Carriers Local 645*, 144 N.L.R.B. No. 978 (1963), the collective bargaining language which was held to be violative of Section 8(e) of the Act provided *in each instance* that an employee who refused to cross a picket line was to be immune from *any sort of discipline*, including discharge. The contractual language in issue in this case, however, simply guarantees that the employee will not lose his job. The employer in this case may impose any other kind of discipline short of discharge without violating this contractual language, and the clause

further excludes jurisdictional strikes from any protection whatever—under these circumstances it is clear that the Board and the Court below did not look either to intent or to reality, but placed a mechanical construction upon the language applying an unwarranted presumption of unlawful motive or assuming potential, but not actual, unlawful application.

Thus, under the instant clause an employee does not have an absolute right to cross a picket line under the quoted language as an employee would in any of the cases decided heretofore. Therefore if it is true that when an employer, pursuant to a collective bargaining agreement, gave his employees the right to respect any picket line with impunity the provisions of Section 8(e) were violated, then this clause is clearly distinguishable in the instant case, *for an employee does not have total immunity* when he refuses to cross a picket line and stands behind his convictions to the point of paying for them by making himself vulnerable to any disciplinary action short of losing his job.

Unions have argued, unsuccessfully in the past, as in *Los Angeles Mailers Union No. 9 v. N.L.R.B., supra,* that clauses granting total immunity from any disciplinary action were protecting individual refusals, not Union-induced refusals, and thus were not within the Act. That argument, however, does have validity in this case where it clearly becomes the individual's decision to cross or not to cross a picket line and where he must take the individual responsibility and place himself in jeopardy of some discipline as a result of his decision.

2. Since no proof or evidence of intent of the contracting parties or even of Union conduct directed toward enforcing Section XXI was offered to support the Board's interpretation that it is an illegal contractual clause, Section XXI-A therefore must be determined by its terms as *per se* illegal in order for the order of the Board to be enforced. Petitioners contend, however, that the language herein involved is not *per se* violative of the Act. It should be noted that the subcontracting clause which was held by the Trial Examiner to be violative of the Act was upheld by the Board. The National Labor Relations Board refused to read that clause as being applicable to non-jobsite work. The National Labor Relations Board gave the subcontracting clause the benefit of a doubt which it refused to give this "protection of rights clause". Instead, the Board chose to infer illegality based upon what was not contained in the "protection of rights clause" or what the Board thinks should be added to the clause (Section XXI-A). It was made clear in *Teamsters Local 413 v. N.L.R.B., supra,* and *Teamsters Local 386 v. N.L.R.B., supra,* that the similar, but not identical, clauses therein involved were deemed legal insofar as they involved primary disputes either at the contracting employer or a secondary employer meeting the conditions of the Section 8(b)(4) proviso. Thus this generic type of clause is illegal only when it pertains to protecting the individual's rights to refuse to cross an unlawful picket line. On this slender thread hangs the decision of the N.L.R.B. and the order of the Court of Appeals. Had the Union draftsmen in preparing Section XXI-A inserted the

magic word "lawful" before the term "picket line", this case would not be before the Court at this time, for no action would have been taken by the National Labor Relations Board in the first instance. Therefore, the National Labor Relations Board and the Court of Appeals have assumed that because the word "lawful" does not appear, the petitioners intend that the section be applied to unlawful picket lines. This presumption is not consonant with the law set forth by this Court when it noted:

> "Finally, as we said in *Local 357, IBTCW&H of A v. N.L.R.B.*, decided this day, 6 L.Ed. 2d 11, *we will not assume* that unions and employers will violate the federal law, favoring discrimination in favor of union members against the clear command of this Act of Congress. As stated by the Court of Appeals, 'In the absence of provisions calling *explicitly* for illegal conduct, *the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives.*' 279 Fed.2d at 333." *(N.L.R.B. v. News Syndicate Co.,* 365 US 695.) (Emphasis added.)

Thus the National Labor Relations Board and the Court of Appeals in this and in other cases have violated the mandate of this Court by assuming that the unions involved meant to violate the law by failing to affirmatively disclaim all illegal objectives. In the instant case, petitioners did in fact disclaim illegal objectives by deleting from the "protection of rights clause" (Section XXI-A) any application to jurisdictional disputes or strikes. Under the Act and under California law (California Labor Code Sections 1115,

et seq.), jurisdictional strikes are illegal. Thus the unions did manifest an intent that this clause have only lawful application. Nonetheless, the National Labor Relations Board and the Court of Appeals chose to overlook this expression of intent and penalize petitioners not for what was said but for what was left unsaid.

3. As was noted above, the subcontracting clause of the same agreement did not expressly limit itself to application on the jobsite and thus come within the provisions of Section 8(e), but nonetheless the Board and the Court of Appeals found that the Collective Bargaining Agreement involved here was by its terms, its meaning, its history and the employer's business limited to "construction site applicability." There is no rational reason for refusing the protection of rights clause the same interpretation.

4. Petitioners contend that although it might have been found that the unions violated Section 8(b)(4) of the Act by picketing in order to force Disney to sign the contract, it could not have violated Section 8(e) of the Act if indeed Section XXI-A is illegal, because the employer, Disney, did not execute the Collective Bargaining Agreement. Furthermore, it does not appear from the National Labor Relations Board's opinion that any employer and the petitioners executed the Master Agreement with Section XXI-A included therein within the six months' period of limitations set forth in Section 10(b) of the Act, or that it was effectuated within that limitation period. There is no evidence that a violation of Section 8(e) was committed.

CONCLUSION

It is therefore respectfully requested that the decision of the Court below be reversed and that the Board's order be denied enforcement.

Dated, San Francisco, California,
October 16, 1967.

LEVY, DEROY, GEFFNER AND VAN BOURG,
By VICTOR VAN BOURG,
Attorneys for Petitioners.

(Appendices A, B and C Follow)

Appendix A

United States Court of Appeals
for the Ninth Circuit

No. 21,389

National Labor Relations Board,
Petitioner,

vs.

Bay Counties District Council of Carpenters, AFL-CIO, and Its Agent C. R. Bartalini; Carpenters Union Local No. 162, AFL-CIO, and Its Agent, E. W. Honerlah; Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; and Carpenters Union Local No. 1408, AFL-CIO, and Its Agent, Jack Weare,
Respondents.

[July 21, 1967]

On Petition for Enforcement of an Order of the National Labor Relations Board

Before: Hamley and Koelsch, Circuit Judges, and Mathes, District Judge

Per Curiam:

The National Labor Relations Board (Board) petitions for enforcement of its order of October 25, 1965,

issued against the above-named respondents. The Board decision and order is reported at 154 NLRB 1598.

Respondent District Council, with which respondent locals are affiliated, negotiates area-wide collective bargaining agreements (Master Agreements) with several employer associations. In 1956, Wilbur F. Disney, who operates three businesses engaged in the sale and installation of roofing materials, signed a Master Argeement. Although he did not sign subsequent agreements, Disney continued until 1962, to conform his labor policies to the current Master Agreements.

In August, 1962, when a new Master Agreement was negotiated by the District Council and the employer associations, Disney refused to conform to its terms. Instead, he entered into a collective bargaining agreement with District 50 of the United Mine Workers of America. At that time all Disney employees were members of a local union affiliated with respondent District Council.[1]

In an effort to force Disney to sign the Master Agreement, some of the respondents established a picket line at Disney's premises and took other coercive action. This led to the filing of Board charges against respondents to the effect that respondents had violated section 8(b)(4)(i) and (ii)(A) of the Act,

[1]In a separate Board proceeding, Disney's conduct in establishing a contractual relationship with District 50 was found to have violated section 8(a)(2) and (1) of the National Labor Relations Act (Act), 49 Stat. 452, as amended, 29 U.S.C. § 158(a)(2) and (1) (1964).

29 U.S.C. § 158(b)(4)(i) and (ii)(A) (1964), by picketing with an object of forcing Disney to enter a contract containing a clause prohibited by section 8(e), 29 U.S.C. § 158(e). In particular, it was alleged that section XXI-A of the Master Agreement, the picket line clause, is unlawful insofar as it allows an employee to refuse to cross a secondary picket line.[2] The contract section in question is quoted in the margin.[3]

Respondents argue that section XXI-A is not invalid under section 8(e), as held by the Board.

In our opinion, the Board did not err in so ruling. See *Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council and Willamette General Contractors Association,* Case No. 36-CC-130, 155 NLRB 1115, enforced in *National Labor Relations Board v. Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council,* 9 Cir., No. 20783, August 9, 1966, unreported; *Teamster Local 695 v.*

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[2]The complaint also charged other violations of the Act, but we are not concerned with them on this appeal.

[3]Section XXI-A of the contract reads:

"XXI-A. Employees Not To Be Discharged for Recognizing Authorized Lines

"No employee covered hereby may be discharged by an individual employer for refusing to cross a picket line established by an International Union affiliated with the Building and Construction Trades Department of American Federation of Labor, or a Local Union thereof, which picket line has been authorized or sanctioned by the Local Building and Construction Trades Council having jurisdiction over the area in which the job is located and after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer at his address. This Section shall not apply to jurisdictional disputes."

N.L.R.B., D.C. Cir., 361 F.2d 547, 551; *Truck Drivers Local 413 v. N.L.R.B.*, D.C. Cir., 334 F.2d 539, 543-545. The critical contract language involved in the cited cases differs from that of the contract here in issue, but the purport is the same.

The Board order will be enforced.

Appendix B

United States Court of Appeals
for the Ninth Circuit

No. 21,389

National Labor Relations Board,
Petitioner,

vs.

Bay Counties District Council of Carpenters, AFL-CIO and Carpenters Union Locals No. 162, 828 and 1408, AFL-CIO,
Respondents.

DECREE

Before: Hamley and Koelsch, Circuit Judges, and Mathes, District Judge.

This Cause came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against the above-named Respondents, their officers, agents, and representatives on September 27, 1965. The Court heard argument of respective counsel on July 5, 1967, and has considered the briefs and transcript of record filed in this cause. On July 21, 1967, the Court being fully advised in the premises, handed down its deci-

sion granting enforcement of the Board's order. In conformity therewith, it is hereby

Ordered, Adjudged And Decreed by the United States Court of Appeals for the Ninth Circuit that the Respondents, Bay Counties District Council of Carpenters, AFL-CIO, and Carpenters Union Locals Nos. 162, 828, and 1408, AFL-CIO, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Wilbur F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining any of said persons by picketing, or threatening to cause a work stoppage, or causing a work stoppage, or otherwise, where in either case an object thereof is to force or require Wilbur F. Disney to enter into the Northern California Standard Building Trade Agreement, or to enter into the Four Bay Counties Carpenters' Agreement executed on August 20, 1962, containing Section XXI-A herein found to be prohibited by Section 8(e) of the Act, or any other contract or agreement, express or implied, prohibited by Section 8(e) of the National Labor Relations Act, as amended (hereinafter called the Act).

(b) Inducing or encouraging any individual employed by Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening to cause a work stoppage, or causing a work stoppage, or otherwise, where in either case an object thereof is to force or require said person to cease doing business with Wilbur F. Disney.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post at the business offices and meeting halls of Respondent labor organizations copies of the attached notice marked "Appendix." Copies of the notice, to be furnished by the Regional Director (San Francisco, Cal.) for Region 20, shall, after being duly signed on behalf of each Respondent labor organization by its duly designated representative, be posted by Respondent labor organizations immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent labor organizations to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the said notices to the aforesaid Regional Director for posting by Wilbur F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, and Frank Stewart, these recipients willing, at all locations where notices to their employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Decree, what steps have been taken to comply herewith.

Endorsed, Decree Filed and Entered
Aug 2 1967

/s/ William B. Luck
William B. Luck
Clerk

[A True Copy

Attest:
William B. Luck
Clerk]

Appendix C

NOTICE

To All Members, and to All Employees of Disney Roofing Material Co., Disney Cedar Supply Co., Inc., Carlmont Roofing Co., and Various General Contractors

Pursuant to

A Decree of the United States Court of Appeals, Enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We Will Not induce or encourage any individual employed by Wilbur F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, nor will we threaten, coerce, or restrain any of said persons where in either case an object thereof is to force or require Wilbur F. Disney to enter into any agreement prohibited by Section 8(e) of the Act, as amended,

or to force or require said persons to cease doing business with Wilbur F. Disney.

Bay Counties District Council of Carpenters, AFL-CIO

.....

(Labor Organization)

Dated..... By.....

(Chester R. Bartalini, Secretary)

Carpenters Union Local No. 162, AFL-CIO

.....

(Labor Organization)

Dated..... By.....

(Earl W. Honerlah, Business Representative)

Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL-CIO

.....

(Representative) (Title)

Dated..... By.....

Carpenters Union Local No. 1408, AFL-CIO

.....

Dated..... By.....

(Jack Weare, Business Representative)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Members of the signatory labor organizations and employees may communicate with the Board's Regional Office, 450 Golden Gate Avenue, San Francisco, California (Tel. No. 556-3197), if they have any questions concerning this notice or compliance with its provisions.

SUPREME COURT, U. S.

FILED

OCT 19 1967

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Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

154 NLRB No. 120

D-8303
San Carlos, Calif.

United States of America
Before the National Labor Relations Board

Bay Counties District Council of Carpenters, AFL-CIO, and its Agent C. R. Bartalini; Carpenters Union Local No. 162, AFL-CIO, and its Agent E. W. Honerlah; Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; and Carpenters Union Local No. 1408, AFL-CIO, and its Agent Jack Weare and Jones and Jones, Inc.	Case No. 20-CC-378
Bay Counties District Council of Carpenters, AFL-CIO; Carpenters Union Local No. 162, AFL-CIO; Carpenters Union Local No. 828, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and Carpenters Union Local No. 1408, AFL-CIO and Jones and Jones, Inc.; and Interstate Employers, Inc.	Case No. 20-CP-121

DECISION AND ORDER

On April 6, 1965, Trial Examiner Maurice M. Miller issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents filed exceptions to the Trial

Examiner's Decision and a supporting brief; the General Counsel filed cross-exceptions and a supporting brief. The General Counsel also filed a Motion to Strike Respondents Exceptions, to which Respondent filed an Answer. We hereby deny the General Counsel's motion.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in this case. With certain modifications hereinafter stated, we adopt the findings, conclusions, and recommendations of the Trial Examiner; we consider it necessary, however, briefly to set forth in this Decision the relevant factual findings and legal conclusions.

This case involves Respondents' activities directed against three commonly-owned businesses operated by Wilbur F. Disney: Disney Roofing & Material Co.;

[1]The Motion to Strike relies upon the failure of Respondent's exceptions to specify "portions of the record relied on." Rules and Regulations and Statements of Procedure, Series 8, as amended, Section 102.46(b)(3). Respondent's Answer argues that the Board's Rules treat exceptions and briefs as a single document insofar as here relevant. Since Respondent's supporting brief adequately refers to the record to support arguments advanced, we deny the Motion to Strike.

Disney Cedar Supply Co., Inc.; and Carlmont Roofing Co., a corporation;[2] all hereinafter sometimes referred to as the single entity "Disney." These businesses operate from a single premise in San Carlos, California, and are engaged in the building construction industry, selling and installing roofing materials.

Respondent District Council coordinates activities of its constituent local unions, including the Respondent Locals, and negotiates area-wide collective bargaining agreements (referred to as "Four Bay Counties Carpenters' Master Agreements") with several employer associations. Respondent Bartalini is Secretary of Respondent District Council and supervises the activities of its constituent local unions' business agents, including the other individual Respondents herein. Wilbur Disney apparently last signed a Master Agreement in 1956,[3] but despite the fact that he did not sign subsequent agreements, Disney continued until 1962 to conform his labor policies to the current Master Agreements, and made contributions to the union-administered welfare funds provided for in the Master Agreements. Until 1962 all Disney's employees were members of a local union affiliated with Respondent Dis-

[2]These businesses were respondents in an earlier case reported at 145 NLRB 88. The Board there specifically found that the businesses constituted a single integrated enterprise, as does the Trial Examiner in this case. The Board also found that they had violated Section 8(a)(2) of the Act in 1962 and 1963 by unlawfully assisting United Mine Workers of America, District 50 (hereinafter "District 50").

[3]Respondent Local 1408 was actually signatory to the 1956 agreement with Disney, but the form of the contract is such that the local probably did so on behalf of the District Council.

trict Council. A new Master Agreement was negotiated in August 1962, but this time Disney refused to conform to the terms of the contract and instead entered into the unlawful agreement with District 50. Respondents' reactions to Disney's abandonment of their relationship form the subject matter of this case.

The complaint alleges, and the Trial Examiner found, that Respondents violated Section 8(b)(4)(i)(ii)(A) of the Act by inducing employees of neutral employers at several construction sites where Disney was doing business to cease work in order to force Disney to enter into agreements prohibited by Section 8(e), and by threatening general contractors doing business with Disney with work stoppages for the same purpose. The complaint also alleges, and the Trial Examiner found that Respondents violated Section 8(b)(4)(i) and (ii)(B) by inducing employees to engage in work stoppages and by threatening employers with an object of forcing neutral employers to cease doing business with Disney. Finally, the complaint alleges, and the Trial Examiner found, that Respondent violated Section 8(b)(7)(C) by picketing Disney's premises.

The basic findings of fact made by the Trial Examiner are as follows:

In October 1962 and May 1963, Respondent District Council sent form letters to the hundreds of employers covered by the new Master Agreement. The first letter stated that "we intend to enforce the

amendment to Section XIV of the Master Agreement in all cases and at this time particularly with respect to work performed by [Disney]." (Section XIV(b)[4] relates to subcontracting and requires, *inter alia,* a prime contractor or builder to make fringe benefit payments in event of default in such payments by any subcontractor). The later letter stated that Respondents had implemented their earlier warning, and "are seeking and intend to obtain through the grievance procedure of the Master Agreement full compensation . . . ." In May and June 1963, Respondent District Council filed charges with the eight

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[4]XIV. Contracting and Subcontracting

(b) The terms and conditions of this Agreement insofar as it affects an individual employer shall apply to any subcontractor, or his subcontractors, providing services for or working under contract with such an individual employer upon work covered by this Agreement, and such subcontractor, or his subcontractors, with respect to such work shall be considered as an individual employer subject to all of the terms of this Agreement, expressly including Sections XIII, XVII-A, XVII-B, XVII-C, XXI, and XXII hereof. The remedies for default hereunder shall apply directly to the subcontractor, or his subcontractors, except that in the event a subcontractor or his subcontractor fails to make fringe benefit payments or contributions with respect to workmen employed by him pursuant to this Agreement on the project of a prime contractor or prime builder, such prime contractor or prime builder shall be liable to make such payments or contributions within 10 days after such payment has been demanded in writing by the appropriate Fund office, provided such demand is received by the prime contractor or prime builder within 30 days after the applicable administrative office of the applicable Trust Fund has transmitted a notice of delinquency to the parties, and shall be entitled to be reimbursed and indemnified therefor by the subcontractor. The provisions of this paragraph shall be effective at the expiration of 90 days from and after June 15, 1962.

Employer Associations[5] against a number of contractors who had let subcontracts to Disney. Bartalini pursued the grievances to some extent, but the record does not disclose the results, if any, achieved by Respondents in this manner.

On July 15, 1963, Respondent Honerlah, business agent for Respondent Local 162, spoke to a group of Disney employees at a meeting of Disney employees he had arranged. He told the employees that a picket line would soon be set up at Disney's premises and urged them to obtain employment elsewhere in order to pressure Disney into signing the Master Agreement. Picketing began at the Disney premises on July 18, 1963.[6] Soon thereafter all the Disney Roofing and Material employees, except one Harry Oneto,[7] and one or more Carlmont Roofing employees, quit their jobs to avoid losing union benefits and to avoid union discipline. However, Disney continued to make contributions to the welfare funds for Oneto, his remaining member of a Carpenters local.

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[5]Disney's pre-1962 affiliation was with Peninsula General Contractors and Builders Association. Peninsula and the other seven employer associations which are parties of the 1962 Master Agreement with the District Council are termed the Eight Employer Associations when they act collectively, as in handling grievances under the contract.

[6]The picket sign read:

W. F. DISNEY
UNFAIR
Refuses to Sign Collective Bargaining Agreement with Bay County District Council of Carpenters.

[7]Union disciplinary action against Oneto subsequently resulted in a fine and threatened loss of membership if he failed to pay the fine.

Respondent Honerlah told Disney that the picketing would cease if Disney would sign the Master Agreement, a supplement thereto, and the Northern California Building Trades Agreement; terminate his relationship with District 50; and discharge an employee not a member of a Carpenters local. A result of the picketing was the refusal by some truck drivers to enter Disney's premises to make pick ups or deliveries. The picketing continued for more than 30 days—in fact was still in progress at the time of the hearing—and no representation petition was filed.

On a number of occasions an agent of a Respondent Union contacted general contractors for whom Disney was performing or about to perform roofing work and informed them, on the job sites in the presence of one or more of their carpenter employees, that the general contractors' employees would be removed from the job if Disney employees began or continued to work. Several times this conduct caused a neutral employer's employees to cease work. Further details of this conduct by Respondents can be omitted since, as Respondents concede,[8] there is no question that Respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act by such conduct. We adopt the finding of the Trial Examiner to this effect.

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[8]The only reference to such secondary conduct in Respondents' brief states that Respondents do not brief the matter because "the Trial Examiner's findings are based upon matter involving credibility and the weighing of evidence" and therefore Respondents "would be willing to comply" with the order based on such findings. As the Trial Examiner notes, the critical evidence with respect to the secondary activities was uncontradicted and unambiguous.

The extent to which Respondents' activities, both at the construction sites and Disney's premises, violated Section 8(b)(4)(i) and (ii)(A) turns upon the legality under Section 8(e) of various provisions in the contracts that Disney was being pressured to sign. The Trial Examiner found that Respondents conditioned the removal of their picket line from Disney's premises on the signing of the Northern California Standard Building Trades Agreement, and found ten sections of this Agreement unlawful under Section 8(e).[9] Respondents contend that they have consistently disclaimed any interest in having Disney sign this Agreement as a condition precedent to removal of their picket line, and do not defend the legality of any of the sections found unlawful by the Trial Examiner. Respondents also state that they have no objection to an order requiring formal notice by them disclaiming any interest in the signing of this agreement. In the absence of any specific challenges to the Trial Examiner's finding with respect to the legality of the pertinent clauses of the Trades Agreement, we adopt, *pro forma,* his findings that various sections in the Trades Agreement are proscribed by Section 8(e). As we agree with the Trial Examiner that Respondents conditioned the removal of their picket line from Disney's premises on the latter's signing of the Trades Agreement, we find that Respondents therefore violated Section 8(b)(4)(i) and (ii)(a) by engaging in the activities set out

[9]The provisions in question are all set forth as an appendix to the Trial Examiner's Decision.

above with an object of securing Disney's signature to this contract. In the context of this case, we deem it appropriate to frame our order along the lines suggested by Respondents to forbid pressures upon Disney to secure his assent to the Trades Agreement.

With respect to the Four Bay Counties Carpenters' Master Agreement, the Trial Examiner found that Sections XIV(b) and XXI-A, subcontracting and picket line provisions, were proscribed by Section 8(e). The picket line provision is as follows:

> XXI-A EMPLOYEES NOT TO BE DISCHARGED FOR RECOGNIZING AUTHORIZED LINES
>
> No employee covered hereby may be discharged by an individual employer for refusing to cross a picket line established by an International Union affiliated with the Building and Construction Trades Department of American Federation of Labor, or a Local Union thereof, which picket line has been authorized or sanctioned by the Local Building and Construction Trades Council having jurisdiction over the area in which the job is located and after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer at his address. This Section shall not apply to jurisdictional disputes.

We adopt the Trial Examiner's finding that this provision is unlawful under Section 8(e), for it is settled law that when such a clause is so broadly written that it extends immunity from discharge to em-

ployees refusing to cross secondary picket lines, it is to that extent rendered unlawful by Section 8(e) of the Act.[10]

The Trial Examiner also found Section XIV(b), the subcontracting clause set out above at footnote 4, to be proscribed by Section 8(e) and not within the construction industry proviso to that Section. We reject this finding of the Trial Examiner, for Section XIV(b) is lawful under the proviso in question.

The Trial Examiner concluded that the construction industry proviso was inapplicable to Section XIV(b) because the clause was not "specifically limited to site work." Respondents contend that the Trial Examiner erred in not examining the entire Master Agreement and the intent of the parties to that contract to determine whether Section XIV(b) could reasonably be construed as applicable to other than onsite work. Our recent decisions support this contention of Respondents;[11] the failure of a contractual provision to be expressly limited to onsite work cannot alone establish that the provision exceeds the limitations of the construction industry proviso to Section 8(e).

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[10] *Truckdrivers Union Local No. 413 (The Patton Warehouse, Inc.)*, 140 NLRB 1474, enforced on this point, 334 F. 2d 539 (C.A. D.C.); *Los Angeles Building & Construction Trades Council (Quality Builders, Inc.)*, 153 NLRB No. 38; *Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local Union No. 695, (Madison Employer's Council)*, 152 NLRB No. 55.

[11] *Orange Belt District Council of Painters No. 48 (Tri-County Chapter)*, 152 NLRB No. 116; *Los Angeles Building and Construction Trades Council (Fowler-Kenworthy Electric Co.)*, 151 NLRB No. 83.

Numerous other provisions in the Master Agreement support the conclusion that sections not expressly limited to onsite work should be construed as so limited. Thus, the preamble to the agreement states that "Whereas, it is the desire of the parties hereto to stabilize the wages, hours and working conditions of carpenters employed on construction work in said area."[12] Section IV of the contract contains a union-security provision requiring membership after 7 days, lawful only in the building and construction industry, which is not alleged to be unlawful here. Section V provides for a "job site" conference to determine the "pick-up time" to be allowed carpenters. Subsection (a) of Section XIV itself prohibits employers from contracting for work with individual carpenters on a basis other than per diem, and enumerates various types of work where the prohibition is applicable, all of which plainly relate to onsite work. Other provisions are related specifically to onsite problems and conditions and none expressly extends to offsite situations.

The only evidence of the application of Section XIV(b) relates to grievances processed against employers who dealt with Disney, all of which involved onsite work. Moreover, as the Trial Examiner noted, Disney's operations are such that he is unlikely to engage in any subcontracting to others. We disagree with the Trial Examiner's conclusion that because some of Disney's employees prepared for onsite work

[12]Section 2 of the Trades Agreement expressly provides, in contrast, that the contract's coverage is not to be limited to onsite work.

by work performed at Disney's premises, an attempt to bind Disney to the subcontracting clause necessarily was an attempt to bring offsite work within its provisions. Disney's employees in question installed roofs on houses being constructed. Simply because Disney's employees may have reported to Disney's premises before reporting to the construction site or may have engaged in some preparatory work at Disney's premises, it does not follow that Section XIV(b) extends to offsite work, nor does it show an intent by Respondents to so extend the provision.

We therefore conclude from an examination of the Master Agreement itself and all the relevant circumstances shown in the record that there is not sufficient evidence to establish that Section XIV(b) exceeds the limitations of the construction industry proviso to Section 8(e). Furthermore, this subcontracting clause is *not* so "intertwined" with the picket line provision as to render it unlawful also.[13] Consequently, we reject the Trial Examiner's conclusion that the "remedies for default" sentence in Section XIV is proscribed by Section 8(e) because it is "calculated to implement or promote" the illegal purpose of the subcontracting provision. We have found no unlawful purpose in the subcontracting provision; we therefore find none in the provision requiring employers contracting work to persons who fail to make fringe payments required by the Master Agreement to assume responsibility for such payments.

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[13]Compare the clauses in *Quality Builders, Inc., supra,* and *Muskegon Bricklayers Union No. 5,* 152 NLRB No. 38.

Accordingly, we find that Respondents violated Section 8(b)(4)(i) and (ii)(A) of the Act by engaging in the activities set out above with an object of securing Disney's agreement to the picket line provision in the Master Agreement, but that Respondents did not violate that Section of the Act by attempting to secure Disney's agreement to the subcontracting provision of the Master Agreement.

We now consider the Trial Examiner's finding that Respondents' picketing of Disney's premises violated Section 8(b)(7)(C) of the Act. A literal construction of Section 8(b)(7)(C)'s prohibitions would perhaps reach Respondents picketing at Disney's premises, but for reasons now set forth, which are not discussed in the Trial Examiner's Decision, we conclude that Respondents did not, by that conduct, violate that section of the Act.

The record here and our decision at 145 NLRB 88 disclose that, prior to 1962, Disney had an established practice of adhering to the collective-bargaining agreements negotiated by Respondent District Council with other employers. The record here also shows that Disney was a signatory to such an agreement in 1956. During that period, Disney was a member of the Peninsula General Contractors and Builders Association, Inc., an employer organization that negotiated on behalf of its members with Respondent District Council. Peninsula, however, has several classes of members and evidence was introduced at the hearing indicating that Disney was not a full member, i.e., one who authorized Peninsula to bind it to collective-

bargaining agreements. In this event then, Disney is not shown to have been technically bound to the contracts it adhered to except for that signed in 1956. Disney's new bargaining agent, Interstate Employer's, Inc.,[14] had an established collective-bargainig relationship with District 50 when Disney joined it. This fact, in conjunction with the other circumstances set out in our earlier decision, make it plain that Disney in effect ceased to recognize Respondents as the representatives of its employees in 1962 in order to enter into contractual relations with District 50. At this time Disney's employees were all members of one or another Carpenters' local. Since Disney's conduct in establishing its relationship with District 50, and the relationship itself, constituted unlawful assistance and support to District 50, we attach no significance for present purposes to Disney's relationship with District 50.

We have held in previous cases that Section 8(b)(7)(C) is not to be literally applied so as, for example, to reach picketing by a recognized union to secure compliance with an existing contract, since the Section was

> intended to proscribe picketing having as its target forcing or requiring an employer's *initial* acceptance of the union as the bargaining representative of his employees. [Emphasis supplied.][15]

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[14]The association is a Charging Party in Case No. 20-CP-121.

[15]*Building and Construction Trades Council of Santa Barbara (Sullivan Electric Company)*, 146 NLRB 1086, 1087.

In our view the pre-1962 relationship between Respondents and Disney establishes that Disney recognized Respondents as the representative of its employees. At the time the picketing began, virtually every one of Disney's employees was either a member of a union affiliated with Respondent District Council or had recently terminated such membership as a result of Disney's violations of Section 8(a)(2), so there is no question of the majority status of Respondents. And no legitimate reason is suggested to support Disney's decision to cease recognizing Respondents as the representative of its employees in 1962. Under these circumstances, we conclude that a defense to the Section 8(b)(7)(C) allegation has been established.[16] Accordingly, we shall dismiss this allegation of the complaint.

The Remedy

Having found that Respondents have engaged in certain unfair labor practices affecting commerce, we shall order that they cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

Additional Conclusions of Law

Upon the basis of the foregoing findings of fact and the entire record in this case, we hereby delete the Trial Examiner's Conclusion of Law number 4,

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[16] *Local Joint Executive Board, Hotel & Restaurant Employees and Bartenders International Union Locals 19, et al. (Downtowner Motor Inn)*, 146 NLRB 1094, 1099.

renumber the Trial Examiner's Conclusion of Law number 5 as number 4, and adopt the new Conclusion of Law number 5 as follows:

"5. Respondents have not engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act, or, except as stated herein, of Section 8(b)(4)(i) and (ii)(A) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor relations Board hereby orders that the Respondents, Bay Counties District Council of Carpenters, AFL-CIO, and Carpenters Union Locals No. 162, 828, and 1408, AFL-CIO, and their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Wilbur F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining any of said persons by picketing, or threatening to cause a work stoppage, or causing a work stoppage, or otherwise, where in either case an object thereof is to force or require

Wilbur F. Disney to enter into the Northern California Standard Building Trade Agreement, or to enter into the Four Bay Counties Carpenters' Agreement executed on August 20, 1962, containing Section XXI-A herein found to be prohibited by Section 8(e) of the act, or any other contract or agreement, express or implied, prohibited by Section 8(e) of the Act.

(b) Inducing or encouraging any individual employed by Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening to cause a work stoppage, or causing a work stoppage, or otherwise, where in either case an object thereof is to force or require said person to cease doing business with Wilbur F. Disney.

2. Take the following affirmative action which the Board finds will effectuate the polices of the Act:

(a) Post at the business offices and meeting halls of Respondent labor organizations copies of the attached notice marked "Appendix."[17] Copies of the notice, to be furnished by the Regional Director for

[17]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

Region 20, shall, after being duly signed on behalf of each Respondent labor organization by its duly designated representative, be posted by Respondent labor organizations immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent labor organizations to insure that said notices are not altered, defaced, or covered by any other material;

(b) Sign and mail sufficient copies of the said notices to the Regional Director for Region 20 for posting by Wilbur F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, and Frank Stewart, these recipients willing, at all locations where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 20, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

It Is Hereby Ordered that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D.C. SEP 27 1965

Frank W. McCulloch, Chairman
John H. Fanning, Member
Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

Appendix

Notice

To all Members, and to all Employees of Disney Roofing Material Co., Disney Cedar Supply Co., Inc., Carlmont Roofing Co., and Various General Contractors

Pursuant To
A Decision And Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We Will Not induce or encourage any individual employed by Wilbur F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, nor will we threaten, coerce, or restrain any of said persons where in either case an object thereof is to force or require Wilbur F. Disney to enter into any agreement prohibited by Section 8(e) of the Act, as

amended, or to force or require said persons to cease doing business with Wilbur F. Disney.

Bay Counties District Council
Of Carpenters, AFL-CIO
(Labor Organization)

Dated..... By.....
(Chester R. Bartalini, Secretary)

Carpenters Union
Local No. 162, AFL-CIO
(Labor Organization)

Dated..... By.....
(Earl W. Honerlah, Business Representative)

Carpenters Union Local No.
828, United Brotherhood Of
Carpenters & Joiners
Of America, AFL-CIO

Dated..... By.....
(Representative) (Title)

Carpenters Union
Local No. 1408, AFL-CIO

Dated..... By.....
(Jack Weare, Business Representative)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Members of the signatory labor organizations and employees may communicate with the Board's Regional Office, 450 Golden Gate Avenue, San Francisco, California (Telephone No. 556-0335), if they have any questions concerning this notice or compliance with its provisions.

TXD-(SF)-35-65
San Carlos, Calif.

United States of America

Before the National Labor Relations Board
Division of Trial Examiners

Branch Office
San Francisco, California

Bay Counties District Council of Carpenters, AFL-CIO, and its Agent C. R. Bartalini; Carpenters Union Local No. 162, AFL-CIO, and its Agent E. W. Honerlah; Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; and Carpenters Union Local No. 1408, AFL-CIO, and its Agent Jack Weare and Jones and Jones, Inc.	Case No. 20-CC-378
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Mr. Robert Magor, San Francisco, Calif., for the General Counsel.

Mr. C. P. Scully, by *Mr. Victor Van Bourg,* San Francisco, Calif., for Respondents.

Mr. Norman E. Jones, Los Angeles, Calif., for the Charging Parties, Jones and Interstate.

Before: *Maurice M. Miller,* Trial Examiner.

DECISION OF THE TRIAL EXAMINER

Statement of the Case

Upon charges and amended charges filed and duly served, the General Counsel of the National Labor Relations Board caused a Complaint and Notice of Hearing, followed by an Amended Consolidated Complaint and Notice of Hearing to be issued and served upon the parties.

(With respect to Case No. 20-CC-378, Norman E. Jones for the Charging Party filed his original charge July 18, 1963; on September 5th and 10th, amended charges were filed. With respect to these charges, General Counsel's Complaint issued December 12, 1963. Meanwhile—on December 5, 1963, specifically—Jones had filed his charge in Case No. 20-CP-121. On February 17, 1964, General Counsel issued his Amended Consolidated Complaint with respect to both cases.)

Therein, various labor organizations and their agents —designated in the consolidated case caption above— were jointly charged with the commission of unfair labor practices affecting commerce, within the meaning of Section 8(b)(4)(A) and (B), and Section 8(b) (7)(C) of the National Labor Relations Act, as amended. 61 Stat. 136, 73 Stat. 519. Copies of the Amended Consolidated Complaint and Notice of Hearing were duly served upon the respondent labor organizations, their designated representatives, and the Complainants designated in the consolidated case caption, responsible for the charges.

Through their answer and subsequently amended answer, duly filed, the various respondent labor organizations and their designated representatives—cited collectively as Respondents in this decision—have conceded certain jurisdictional and substantive allegations within the Amended Consolidated Complaint; they have, however, denied General Counsel's jurisdictional conclusion. Denials have likewise been entered with respect to the commission of any unfair labor practices.

(With their answers, Respondents filed Motions to Dismiss, first with respect to General Counsel's original Complaint, and then with respect to General Counsel's Consolidated Complaint; both these motions were denied.)

Pursuant to notice, a hearing with respect to the issues was held at San Francisco, California, between March 10 and 13, 1964, before the undersigned Trial Examiner, duly designated. The General Counsel and Respondent were represented by counsel; the Complainants were represented by their labor relations consultant. General Counsel's motion to amend his Amended Consolidated Complaint, substantively, was granted. Thereafter, each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. When their testimonial presentations were complete, counsel and the Complainant's representative waived oral argument. Counsel for Respondents renewed his motions to dismiss; these will be disposed of by the present decision. A brief has

been received from the General Counsel's representative; it has been fully considered.

FINDINGS OF FACT

Upon the entire testimonial record, documentary evidence received, and my observation of the witnesses, I make the following findings of fact:

I. Jurisdiction

Throughout the period with which this case is concerned, Wilber F. Disney, an individual operating under the name and style of Disney Roofing and Material Company, has been engaged in the building construction industry, in the business of installing wood, composition shingle, and wood shake roofs. Disney Cedar Supply Co., Inc., a California corporation, is now, and has been at all times material herein, engaged in the wholesale and retail sale of shingles, shakes, and composition roofing materials and supplies. Carlmont Roofing Co., a California corporation, is now, and has been at all times material herein, engaged in the business of installing wood, composition shingle, wood shake, and tar and gravel roofs and waterproofing.

Disney Roofing and Material Company, Disney Cedar Supply Co., Inc., and Carlmont Roofing Co.—designated collectively as Disney within this decision—are, and at all times material herein have been, affiliated business enterprises with common directors, officers, owners, and operators; they constitute a single,

integrated business enterprise. Their directors and operators formulate and administer a common labor policy for the designated companies, which affects employees of each company. All the companies designated operate from a single office and place of business located within the city of San Carlos, California.

With matters in this posture, the coordinate activities of the various business entities described must be considered so closely interrelated, and so dependent upon each other that the totality of their operations warrants consideration as a single enterprise for jurisdictional purposes. *Wilber F. Disney,* 145 NLRB No. 11, and cases therein cited.

During the year which preceded issuance of General Counsel's Amended Consolidated Complaint, Disney, in the course and conduct of the business operations set forth above, purchased and received directly from points outside the State of California, materials and supplies valued in excess of $50,000. Despite the formal denial noted in Respondents' answer, therefore, I find that Disney is now, and has been at all times material, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the statute. With due regard for the jurisdictional standards which the Board presently applies—see *Siemons Mailing Service,* 122 NLRB 81, 43 LRRM 1046, and related cases—I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate the statutory objective.

II. The Respondent Unions and their Agents

The Bay Counties District Council of Carpenters, AFL-CIO, together with its constituent locals, No. 162 (San Mateo, California), No. 828 (Menlo Park, California), and No. 1408 (Redwood City, California), designated collectively as Respondents within this decision, are, concededly, labor organizations within the meaning of Section 2(5) of the Act, as amended;

Throughout the period with which this case is concerned, Chester R. Bartalini, Secretary, and Earl W. Honerlah, Jack Weare and Walter Skoczylas, business representatives of Respondent District Council, have been agents of the designated respondent, acting on its behalf, within the meaning of Section 2(13) of the Act, as amended. Likewise, Earl W. Honerlah has functioned as Respondent Local 162's agent, Walter Skoczylas has functioned as Respondent Local 828's agent, and Jack Weare has functioned as Respondent Local 1408's agent, subject to Bartalini's supervision; these business representatives have functioned in behalf of the locals named within the meaning of the statutory provision previously noted.

III. The unfair labor practices

A. *Facts*

1. Background

For some years, Respondent District Council, functioning in behalf of its various constitutent locals, has negotiated and signed master labor contracts with representatives of eight employer groups whose mem-

bers have been engaged in building and construction work within San Francisco, San Mateo, Marin, and Alameda Counties, California; these contracts have been designated as the Four Bay Counties Carpenters' Master Agreements, customarily. Before the period with which this case is directly concerned, one such contract had been negotiated between the Eight Employer Associations and Respondent District Council dated June 24, 1954; this contract had later been modified by a June 15, 1955, supplement.

(One employer group bound by this master contract was the Peninsula General Contractors and Builders Association, Inc., a trade association of building and construction contractors functioning on the San Francisco peninsula, within San Mateo County particularly; this Association, pursuant to its constitution and bylaws, represented and still represents, Builder Members within the Building Industry "in the development of labor agreements, in labor disputes and in other phases of management-labor relations"; Builder Members, by virtue of their Association membership, vest all bargaining rights in such matters with the Association's board of directors.)

On July 9, 1956, W. F. Disney, personally—functioning on behalf of Disney Roofing Company, specifically—signed a document designated "Interim Agreement Supplement To The Master Agreement Dated June 15, 1955"; Respondent District Council was the nominal second party, though the document was actually signed by Local 1408's representative. So far as the record shows, Disney's business operations, for some time thereafter, were conducted pursuant to the provisions

of the Carpenter's Master Agreement then current, modified by this supplementary contract.

On August 20, 1962, Respondent District Council negotiated and signed a new master contract with the Eight Employer Associations; this agreement had a June 16, 1962, retroactive date. The contract was for a three-year term.

Thereafter, with a letter dated October 3rd, Secretary Bartalini of Respondent District Council notified Disney that "as of June 16, 1962, a new Master Agreement is in full force and effect"; Disney was requested to bring his firm into compliance with the new contract by signing a document (enclosed) designated "Bay Counties Carpenters Memorandum Agreement" which would commit him to comply with the provisions of the Bay Counties District Council of Carpenters Master Agreement regarding wages, hours and conditions of work.

(Section XIV(b) and Section XXI-A of the designated master contract—the respect to which General Counsel makes certain contentions to be discussed hereinafter—are set forth verbatim within Appendix B, attached to this decision.)

Presumably, however, Disney had already made clear his reluctance to comply with Respondent District Council's request. Within a previous letter dated October 2nd—directed to "all contractors covered or signatory to the Bay Counties District Council of Carpenters Master Agreement" doing business within San Mateo County—Bartalini had declared Respondent

District Council's intention to enforce Section XIV(b) of the master contract, noted, with respect to work performed by Disney; substantially, this letter represented a notice that work done by Disney for covered or signatory contractors, would be considered governed by the Master Agreement's terms, and that such contractors, doing business with Disney firms, would be expected to make good any defaults by Disney regarding "fringe benefit payments or contributions with respect to workmen employed by him" pursuant to the master contract, on the project of a prime contractor or prime builder.

On October 9th, the Peninsula General Contractors and Builders Association was sent a copy of the notice in question; further, the Association was told that Disney had seen fit "after many years" to ignore Respondent District Council's master contract, and sign a District 50, United Mine Workers, contract. Secretary Bartalini, functioning in Respondent District Council's behalf, declared that:

> Under the circumstances, I would deem it advisable that you make all of your members aware of our position so that unpleasantries may be avoided. We are determined to enforce our Agreement in every respect.

The Association was also advised that charges against Disney had been filed with this agency. Actually, such charges—with respect to violations of Section 8(a)(1) and (2) of the statute—appear to have been filed by the Building and Construction Trades Council of San Mateo County, shortly thereafter. See *Wilber F. Dis-*

ney, 145 NLRB No. 11, 54 LRRM 1313, for a history of the developments which had preceded the charges.

Subsequently, on various dates between May 17th and June 4, 1963, Respondent District Council filed charges—pursuant to Section XVI of the Master Agreement, which sets up procedures for the settlement of disputes—against eight building contractors privy to the contract in question; they were charged, specifically, with violations of Section XIV(b) of their contract, because of subcontracts let to Disney firms. Concurrently, within a letter dated May 29th, contractors covered or signatory to the master contract, doing business within San Mateo County specifically, were reminded of Respondent District Council's previously-expressed determination to enforce their contract's Section XIV subcontractor clause. Letter recipients were told that certain signatory contractors had subcontracted work to Disney firms in violation of their contractual restrictions. Further:

> This is to advise you that we have implemented our warning of October 2, 1962, and are seeking and intend to obtain through the grievance procedure of the Master Agreement full compensation, from the contractor covered by or signatory to our Master Agreement, for all employees covered by the Master Agreement who were not employed by reason of the acts of that contractor's sub-contractor and all other remedies available under Section XIV of the Master Agreement.

Subsequently, Bartalini met—two times at least—with the Eight Employer Association grievance committee; Disney was reported to the group as a so-called unfair

contractor, not in compliance with the master contract; the contractors were told that, pursuant to Section XIV(b) of the contract in question, they were "duty bound" to make sure that any work performed under Carpenters Union jurisdiction was performed by a contractor or subcontractor privy to its terms.

While a witness, Bartalini could not recall whether these meetings had had any tangible result; Disney, so far as he knew, had continued to perform subcontract services for at least one of the contractors charged.

2. Placement of the picket line

With matters in this posture, Disney's employees were summoned to meet at the San Mateo office of the Building and Construction Trades Council of San Mateo County on July 15th; some six Disney workers responded. They met with Honerlah, Weare and Sam J. Shannon, Respondent Local 162's assistant business representative. Henry Baer, a member of the designated Respondent Local, was also present, as were U.S. Simonds, Jr., business representative and secretary-treasurer of the Building Trades Council, and Henry P. Schwab, Council president. Simonds holds membership in Respondent Local 162; Schwab was then—and presumably still is—concurrently president of Teamsters Local 216. Honerlah urged the workers present to leave Disney's employ, since "in that way" Respondents might be able to make him "come around" and sign the Carpenters Master Agreement.

(These findings rest, primarily upon the testimony of Harry Oneto, one of the Disney workers present, which Respondent Local 162's business representative partially corroborated. Honerlah, however, did testify that the meeting had been called—pursuant to a request made by two dissatisfied Disney workers—for the purpose of considering pressure tactics calculated to force payment by Disney of some "retroactive pay" purportedly due his workers for the period between the current Master Agreement's effective date, June 16, 1962, and its August 20th date of execution. Such testimony, with respect to the meeting's purpose, fails to persuade. When the meeting was held, during July, 1963, this so-called "retroactive pay" period was one year past; further, whatever legitimate claims Disney workers might have had for such retroactive pay would necessarily have had to rest upon some prior Disney concession written or verbal, that retroactivity commitments made by construction contractors privy to the Master Agreement would likewise be honored by him. No such prior concession by Disney has been cited. With due regard, therefore, for the record considered as a whole, coupled with my observation of the witnesses, Honerlah's testimony with respect to the meeting's purpose—so far as it may vary from that which General Counsel's witness provided—has not been credited.)

Disney's men were also told that a picket line would shortly be established at their employer's premises. They were solicited not to cross the line, and declared

their willingness to refrain from doing so. Upon this note, the meeting was terminated.

Because of their dispute with Disney's firms—bottomed upon his then-current contractual relationship with District 50, United Mine Workers, coupled with his refusal to become a Carpenters Master Agreement signatory—Respondents placed a picket before Disney's San Carlos premises; picketing began July 18, 1963, and has continued to date. Respondent Honerlah was the first picket; thereafter, several other men have served in that capacity. Throughout, the sign carried by the picket has read:

W. F. DISNEY
UNFAIR

Refuses to Sign Collective Bargaining Agreement with Bay Counties District Council of Carpenters

When Disney and his workers came to work on the morning of the 18th they observed the picket; most of Disney's employees, however, crossed the picket line that day. Shortly after reaching his office, Disney went out to speak with Business Representative Honerlah, present to observe the picket; he requested a statement, from the latter, with respect to the picket's purpose.

Summoned as witnesses, herein, Disney and Honerlah provided divergent testimony with respect to the substance of their conversation.

Disney testified, substantially, that Honerlah had stated Respondents' set of conditions for the picket's

removal as follows: That Disney would have to sign the Carpenters Master Agreement, the Bay Counties Carpenters Memorandum Agreement, and the Northern California Standard Building Trades Agreement, copies of which were submitted for his perusal; further, that he would have to terminate his contractual relationship with District 50, United Mine Workers, and discharge one worker, Jim Hartless, who was not then a Carpenters Union member.

With respect to the last two conditions designated, Honerlah—while a witness—proffered no denial. Further, Respondent's business representative conceded that he had declared the picket's removal conditional upon Disney's execution of both the Carpenters Master Agreement and the Memorandum Agreement noted. Honerlah denied, however, that Disney had ever been requested to sign any Building Trades Agreement, declaring merely that a copy had been given him with the comment that he "might like to look at" the document in question.

(Considered as a whole, the present record preponderantly supports Disney's version. Honerlah's copy of the Building Trades Agreement, which he gave Disney on the morning of July 18th, already bore the signature of the Council's treasurer and business manager, Simonds and Respondent Local 162's assistant business representative, Shannon; further, it bore the Building Trades Council seal. Simonds—who, customarily, holds custody of the Council's seal—routinely signs Building Trades Agreement forms in blank, seals them, and gives copies to various local repre-

sentatives for distribution. When the document, therefore, was presented to Disney, it lacked merely his signature to make it a binding commitment. Previously, both Simonds and Shannon had been present at the July 15th meeting with Disney's workers. Concededly, Simonds had then contributed a report regarding "a little back history" to the discussion. Further, some time during the morning of July 18—though possibly after the Disney-Honerlah conversation now in question—Simonds visited Disney's premises. His course of conduct in this respect fully warrants a determination that the San Mateo Building and Construction Trades Council shared Respondents' concern with regard to the picket's placement. Reference has already been made to the fact that one Disney firm, Carlmont Roofing Company, was then in the business of installing waterproofing, and tar and gravel roofs. Such work, nominally, fell within the trade jurisdiction of the Roofers Union; Local 40 of that organization, though it maintained San Francisco headquarters, held San Mateo Building and Construction Trades Council membership. With matters in this posture, the Building and Construction Trades Council's concern, with respect to the picket at Disney's premises, clearly must be considered more than casual.)

Due consideration of the record as a whole, coupled with my observation of the witnesses, has convinced me that Business Representative Honerlah—contrary to his present denial—did request Disney to sign the Building Trades Agreement form proffered for his perusal; further, I find, this request was made within

the context of their discussion with respect to Respondents' conditions precedent for the picket's removal.

3. Subsequent developments

a. *Primary pressures and their consequences*

(1) Disney's workers

Within a period of several weeks, subsequent to the picket's appearance, most Disney Roofing and Material Company workers ceased work. One Carlmont worker, Donald Scott, likewise ceased work. Finally, only one Disney Roofing worker, Harry Oneto, remained; he did not report to Disney's yard for assignments, but received his dispatch orders by telephone and reported directly to his job sites.

So far as the record shows, the men who refused to cross Respondents' picket line were all Carpenters Union members; Disney's testimony, which Respondents have made no effort to controvert, warrants a determination that they said they were leaving because, should they fail to respect Respondents' picket line, they would lose their fringe benefits and be subject to union fines.

During the months which followed, Oneto was visited several times while on Disney's projects; he was requested to cease work for Disney and transfer to a job with some "legitimate" contractor. These requests were made by Jack Weare, Respondent Local 1408's business representative. Oneto was told that, should he continue his work for Disney, he would be cited and fined.

(On one occasion, I find, Weare's presence caused a residential construction contractor to request the removal of Disney's crew from the job, since he did not wish to be involved with any "union" trouble. Subsequently—when contacted by Weare while at work on another project—Oneto and a fellow Disney worker, rather than "cause" an argument, left their jobs. Finally, Weare caused a Redwood City residential construction project to be picketed for four days, with picket sign language substantially the same as that which appeared on the sign carried at Disney's yard, while Oneto was at work there pursuant to Disney's roofing subcontract with the builder.)

On October 14th, Weare did issue the threatened citation; Oneto was charged with working behind a duly authorized picket line, under Section 55, paragraph 10, of the United Brotherhood's General Constitution—though there was no picket before the construction project at the time—and with remaining at work despite the fact that he had been called off his job, under Section 44 of Respondent District Council's trade rules. Pursuant to Respondent Local 1408's trial board hearing finally held December 11, 1963, he was fined $49.50; on December 20th, Respondent District Council's notice of concurrence with respect to the fine was dispatched to Disney's worker. Thereafter, on February 28, 1964, Oneto was notified by his then-current home local, Local No. 2006 of Los Gatos, California, that persistence in his refusal to pay the fine, before March 3rd, would subject him to loss of membership.

Upon numerous occasions—cited for the record without contradiction—some known representative of Respondents has followed Disney Cedar Supply Company trucks—likewise W. F. Disney personally—to residential job sites where Disney crews were scheduled to perform, or were actually performing, roofing work. There—so the record shows—the union representative would get out of his car, speak to various people at the job site, and make notes. Meanwhile, back at Disney's San Carlos yard, various pickets—throughout the period with which this case is concerned, have, conspicuously, noted the license numbers on truck carriers driven for his customers and suppliers.

Before picketing began at Disney's yard, members of Respondent Local 1408 had been urged—through a notice published by the San Mateo County Union Gazette, distributed as "The Only Official AFL-CIO Publication" of the Building and Construction Trades Council of the county—to contact Business Representative Weare if Disney Roofing workers were seen on their jobs. Thereafter, between August 5th and October 21, 1963, several more notices were published for the information of Carpenters Union members and building tradesmen within the county. These readers of the San Mateo County Union Gazette were told that Respondent District Council had placed an "educational picket" before Disney's yard, designating Disney as unfair because of his refusal to sign the District Council's contract; that Respondents picket jobsites when they find an employer who does not want to help unions maintain area standards; that employees

should "Look for the picket sign on the jobs that ignore our request not to let W. F. Disney do their roof" until he signed Respondents' agreement; that employees should "check all shinglers" on their jobs; that "Disney still has men who have crossed our picket line and are working on jobs" within the area; that workers should notify Respondents if they should see Disney Roofing shinglers on their jobs, or if Disney trucks should deliver shingles or shakes to their jobsites, so that Respondents might "observe the jobs more thoroughly" to see who was doing the roofing work; that two "so-called" AFL-CIO shinglers were "dodging" Respondent and were still working for Disney, though they would not get their vacation, health, welfare and pension benefits paid into appropriate trust funds; that some Carpenters Union members had crossed Respondents' "informational" picket line and had been dispatched by Disney without going through their Local Union hall; and that Respondent Local 162's members had a responsibility to see "that all men working on the job with them" are members of AFL-CIO Building Trades local, properly dispatched through a Local Union hall.

(2) Interference with pickup and delivery services

Sporadically, during the eight-month period between July 18th and the date when the hearing in this case began, drivers for various Disney customers and suppliers have refused to pick up materials purchased, deliver supplies, or otherwise perform services at Disney's picketed yard, for their respective em-

ployers. Testimonial and documentary evidence proffered with respect to these refusals—which the respondent labor organizations and their representatives made no effort to controvert—may be summarized as follows:

Refusals to pick up goods purchased—with respect to four designated Disney customers, counsel for the General Counsel has proffered credible testimony—some of it with documentary corroboration—purporting to show eight separate refusals by drivers to pick up materials purchased at Disney Cedar Supply Company's yard:

1. *Millbrae Lumber Company*—Driver Thomas J. Cala testified that on three occasions—with no dates specified—he was dispatched to pick up materials purchased at Disney's yard, but observed the picket and picked up no goods. Driver Thomas P. Ickes testified that, when first dispatched to Disney's yard after July 18th, he observed the picket and returned to his employer's premises; but that, pursuant to direction, he made pickups, thereafter, on five subsequent occasions. Company records show that, between July 18, 1963, and the end of the year, eighteen purchase orders were placed with Disney's firm; that seven pickups were concededly made by the Company's two regular drivers, three by a company partner, one by another company man, and four by drivers not specified; while three orders (one in August and two in October, specifically) were delivered to the company's yard, presumably by Disney drivers.

2. *Wisnom Lumber Company*—Driver Lloyd Linken testified that, on two occasions during

October, 1963, he had been dispatched to pick up materials purchased at Disney's yard but refused to go through the picket line. Company records show two prior pickups at Disney's yard during August, 1963, by the company secretary's son, and two October deliveries by Disney drivers (with the first covered by a supplementary $5 delivery charge and the second showing no such charge), together with a subsequent December pickup by Linken, the Company's regular driver.

3. *Izmirian Roofing and Sheet Metal Company*—Testimony proffered by the Company's manager reveals that, sometime after July 18th, a company roofer was directed to purchase some materials at Disney Cedar Supply Company's yard, but refused to cross the picket line and made his purchase (which should have cost no more than $8-$12, approximately) elsewhere.

4. *Greenhorn Ranch, a Blair Land Company Development*—Testimony by Wilber F. Disney was proffered to support a contention that some driver (name unknown) presumed to have been dispatched by the designated ranch's owner, failed to cross the picket line at Disney's yard to pick up a special order on October 16, 1963, for reasons never stated, and that "Fletch" Reynolds, (Greenhorn Ranch owner) had to make the pickup, personally, the following day.

With respect to one other Disney customer, Bruce Bauer Lumber Company, counsel for the General Counsel proffered testimony by Arthur Della Santa, Disney's bookkeeper. Della Santa's testimony purported to show that on March 9, 1964, Bauer's had called to price some shingles; that a price had been

quoted for shingles picked up at Disney's yard; that Bauer's spokesman had then requested a price quotation for shingles delivered; that, when asked why someone could not be dispatched to pick up the shingles, Bauer's spokesman (never named) had replied, "Well, our driver doesn't want to come into your yard"; that Disney's bookkeeper had then quoted a price for the shingles delivered; and that Bauer's representative had thereupon requested delivery. Since a determination that Disney's driver had been forced to deliver this purchased material *because of a refusal by Bauer's driver to enter Disney's yard* would necessarily have to rest upon Della Santa's hearsay testimony, in that regard, no factual conclusion seems warranted that this incident probatively reflects a refusal to pick up goods induced by the picket's presence.

Refusals to deliver supplies—With respect to three designated Disney suppliers, counsel for the General Counsel has proffered credible, uncontroverted testimony which, purportedly, reveals three separate refusals by drivers for the several suppliers to deliver materials purchased to Disney Cedar Supply Company's yard:

1. *George T. Gerhardt Co., Inc.*—Testimony which Wilber F. Disney proffered—with documentary corroboration—reveals that this company had been requested, on July 25, 1963, to deliver a load of sheet metal products; such a delivery made with Gerhardt's truck and driver, Disney's testimony shows, would have been consistent with past practice. The company's driver

told Disney's bookkeeper by telephone, however, that delivery to Disney's yard would not be made by him because of the picket's presence; he requested instructions with respect to disposition of the merchandise. Gerhardt's driver was told to leave his load at another place of business, one block distant, so that it could be picked up by a Disney driver there. This was done; the material purchased was picked up and reached Disney's yard approximately one hour later.

2. *Pacific Steel and Supply Company*—Wilber F. Disney's testimony—proffered with documentary corroboration—shows that he placed a Friday, September 6, 1963, telephone order for nails with this company. Previously, this supplier had delivered goods purchased. When Disney's September 6th order was placed, however, some Pacific Steel representative (name not specified) reported his company's knowledge that Disney's yard was being picketed, and declared that "they" didn't want to cross the picket line. Disney protested that the picket was merely an "informational" picket, so that it would be all right for Pacific Steel's driver to come through. The nails were subsequently delivered, without difficulty, on Tuesday, September 10th. While a witness, Disney claimed that this represented a delivery delay; he contended that—consistently with past practice—his Friday order should have been satisfied with a Friday or Monday delivery.

3. *Pacific Ready-Mix, Inc.*—Composite testimony proffered by this company's branch manager, salesman and truck driver—with some documentary support—warrants a determination that Disney placed a telephone order January 28, 1964,

for roofing gravel; that Pacific Ready-Mix driver Kneer was given the material to deliver, but refused to complete delivery because of the picket's presence. His truck load of roofing gravel was returned to the designated company's yard and dumped. Pacific Ready-Mix records for the twelve-month period between March 21, 1963, and March 4, 1964, show that Disney made nine purchases; Disney's drivers called at the company's yard, routinely, to pick up materials purchased. The company's salesman testified, credibly, that Disney's firm "usually" purchased granite, for use on composition roofs, in small quantities—normally less than the quantity called for by his January 28th order. According to Pacific Ready-Mix' branch manager, Kneer's load was worth $40 approximately; though company records do show a subsequent January 30th purchase by Disney of granite worth $3.78, nothing in those records would support a determination—consistent with Disney's unsupported recollection—that the dumped $40 order was ever picked up by a Disney driver or drivers.

With respect to one other Disney supplier, Red Star Industrial Service, counsel for the General Counsel provided further testimony by Disney's bookkeeper. Della Santa's testimony was proffered to show that the designated firm—which provides a weekly laundry service for the uniforms worn by Disney drivers—failed to provide service during the latter part of January and early February, 1964, for a period of about two weeks. When he telephoned Red Star, to determine what the trouble was, Della Santa was pur-

portedly told by that company's "office girl" shortly thereafter that their driver had not been stopping at Disney's because of the picket's presence. Within one week—so Disney's bookkeeper testified—Red Star laundry pickups and deliveries were resumed; the driver, however, entered and left Disney's office through a rear door. Since a determination that Disney's uniform laundry service had been temporarily suspended, specifically, *because of a refusal by the laundry service driver to cross the picket line* would necessarily have to rest, once more, merely upon Della Santa's hearsay testimony, no factual conclusion has been drawn that Red Star's service suspension probatively reflects a refusal by that company's driver, in the course of his employment, to perform his regular services on Disney's premises because of the picket's presence.

Summaries presented for the record with respect to Disney's gross sales, particularly for the calendar year within which picketing began, reveal that his Disney Roofing and Material Company suffered a significant gross revenue decline within the August-December period. Disney Cedar Supply Company, however, had significantly higher gross sales for the last six months of the calendar year than for the first six months. Similarily, gross revenue figures for Carlmont Roofing Company, for the third and fourth quarters of the year, were better than 100 percent higher than the designated firm's gross sales for the first six months of the calendar year. Except for the limited group of particular instances previously noted, General Counsel

has produced no generalized testimony or documentary proof that Respondents' picket line successfully persuaded "individuals" working for persons other than Disney, during the course of their work, not to pick up, deliver, or transport any goods, or to refrain from performing services.

b. *Secondary pressures and their consequences*

(1) Virgil M. Frey

Virgil M. Frey, an individual, doing business as Frey & Frey, functions as a licensed general contractor, engaged in the building and construction industry, with a Menlo Park, California, headquarters. During August, 1963, he was a member of Peninsula General Contractors and Builders Association, Inc., whose member employers purchased, indirectly, from various out-of-state points, products valued in excess of $50,000, during the 1963 calendar year. Through his Association membership, Frey was, then, privy to the Four Bay Counties Carpenters Master Agreement. Customarily, he hires only carpenters and some laborers for his custom residence construction projects; subcontractors handle the rest of the specialty work. Frey's carpenters normally are hired through Respondent Local 828's hall.

Testimony proffered by Frey personally—which Respondents have not contradicted—reveals that, on Friday, August 23rd, Disney had one worker constructing a roof on Frey's then-current Redwood City residential construction project; he had been on the job two days. Business Representative Skoczylas called

upon the general contractor, his carpenter foreman, and two of his carpenters at the job site. The business representative told Frey—within the presence of his carpenters—that he would have to "send" the latter "off the job" so long as Disney's worker did the roof shingling, since "Disney wouldn't sign an agreement with the Union"; that Frey's men, meanwhile, would not be permitted to work on other nearby jobs; that he (Skoczylas) had "orders from Mr. Bartalini to pull the men from their jobs"; and that Frey's carpenters would not be permitted to resume work the following Monday unless he (Skoczylas) had received the "go ahead" from Respondent's District Council's secretary. Frey's carpenters left their work forthwith; so did his foreman.

On Monday, August 26th, Disney's roofer was still working on Frey's roof; Skoczylas told the contractor that he could not put his carpenters back to work without Bartalini's concurrence; the carpenters, therefore, did not resume work on their suspended project. The next day, however, Frey was able to tell Skoczylas that Disney's roofer was finished; he asked the respondent business representative whether Bartalini had been contacted. According to the general contractor, Skoczylas reported that Bartalini had said he could put his men back to work if Disney's roofer was finished; Skoczylas told him to put his men back if he promised never to use Disney as a roofer again. Frey made no such promise, but declared that he would give the matter "very serious consideration" before he decided to engage Disney's services. Two of Frey's

carpenters then resumed work, pursuant to direction, at his Redwood City project; one, meanwhile, had left his employ.

The record warrants a finding that Frey, nevertheless, did use Disney's services as a roofer, for another project, one month or more later; Respondents, so far as the record shows, registered no protest.

(2) Thomas J. Crosby

Thomas J. Crosby, an individual doing business as Crosby Development Company, functions as a licensed general contractor in the building and construction industry, with Lafayette, California, headquarters. Before the summer of 1963, Crosby had held a Contra Costa County Home Builders Association membership; by virtue thereof he had been privy to Carpenters' Union contracts covering Northern California counties exclusive of the four Bay Area counties. Some time in May, 1963, however, Crosby began construction work on three San Carlos (San Mateo County) residence projects. Late in June, he engaged Disney as his roofing subcontractor.

During July, 1963—on a date not specified for the record—Disney's crew made preparations to begin work on their first Crosby roof. One day before the roofing subcontractor's crew was due to begin work, however, Respondent Weare called upon the general contractor at the job site.

(Griswold, Crosby's carpenter foreman; Robinson, one of his carpenters; and some other men were present.)

During the course of a lengthy conversation, Weare told Crosby that, if Disney's crew was permitted to construct the roof, he (Weare) would have to "shut . . . down" Crosby's job; that Disney had not signed the Four Bay Counties Carpenters Master Agreement; that Crosby would, himself, be deemed "unfair" if he let Disney do the roof; and that Crosby's carpenters would, then, be "pulled" and given citations. Crosby was directed to get Disney's crew "off" the construction project.

> (So far as the record shows, however, Disney's crew did complete the roof on Crosby's first residential project; Respondent Weare did not "pull" the general contractor's carpenters or give them citations.)

On August 21st, Disney's crew delivered and stacked a supply of shingles at Crosby's second residential project; construction work on the roof, however, was not then underway. That afternoon, Weare repeated his prior threat—within the presence of Crosby's carpenters—to "pull" the carpenters in question and give them "citations" should Disney's crew be permitted to construct the roof; Crosby was told that Disney "hadn't signed the Union's Master Agreement" and "wasn't complying with the union's regulations." Crosby protested that Disney had "union" carpenters; that he (Crosby) had a contract with Disney; and that he did not want to dismiss his roofing subcontractor and wind up with a lawsuit. Weare, I find, merely replied that he could supply Crosby with shinglers qualified to construct the roof.

The next day, despite Respondent Weare's prior representations, Disney's crew was permitted to begin work on Crosby's second residential project. During the morning of Friday, August 23rd, while Griswold and two carpenters were working on the same project, Weare returned. He promptly "pulled" Crosby's carpenter foreman and both carpenters from the job, stating that he was doing so because Disney's men were not in "our" local. The business representative, however, gave the carpenters permission to work on Crosby's third residential project, nearby, while he telephoned the general contractor.

During their conversation, Weare accused Crosby of "using Disney" and told him that he (Weare) was "going to pull" his men off the job. The respondent business representative, however, renewed his offer to furnish Crosby with shinglers qualified to finish any needed roofing work. Crosby pleaded with Weare to defer matters, since it was pay day, and since he could not reach the job forthwith. Weare was reminded, further, that Crosby and Disney had a contract. The general contractor protested that he had no knowledge whether Disney was, or was not, privy to the Four Bay Counties Carpenters Master Agreement; he requested some communication from Respondents with respect to Disney's lack of status as a contract signatory. Weare replied that he could not "chase Disney off" Crosby's roof; he insisted that the general contractor would have to do it.

Weare then returned to Crosby's third residential project; he told Griswold that he (Weare) would have

to "pull" him and Crosby's other two carpenters from the job. Griswold was further advised that Crosby wished to speak with him.

When Griswold telephoned his superior, he reported Weare's decision to direct a work stoppage; so far as the record shows, however, nothing was said with respect to Weare's reasons. After some discussion, Crosby acquiesced in Griswold's decision to refrain from work; he directed the men to remain at the job site, however, until Mrs. Crosby could arrive with their pay checks. The carpenter foreman reported this to his men.

> (With matters in this posture, Disney—personally—reached the Crosby projects. While he was present, the respondent business representative requested Griswold—who had returned from his telephone conversation with Crosby meanwhile—to check the union cards of Disney's men then at work on Crosby's second residential project. Griswold, after doing so, reported that Disney's men "held" paid up cards with various Carpenters' Union affiliates.)

Respondent Weare, thereupon, reiterated his declaration that Crosby's carpenters had been "pulled" from their jobs; he directed them not to resume work, even on the following Monday, until they got in touch with him. Griswold, together with Crosby's two other carpenters, waited for their checks—without doing any further work—until Mrs. Crosby brought them in mid-afternoon.

There is a suggestion in the record, derived from Crosby's uncorroborated but uncontradicted recollec-

tion, that Disney's crew finished their work on the general contractor's second residential project later that day.

On Monday, August 26th, Crosby's carpenters resumed work on his third residential project, after Griswold had telephoned Respondent Local 1408's office and learned that Weare had left on a two-weeks' vacation. No Disney workers were present; Griswold and his crew were doing work preparatory to roofing on the residence in question. According to Griswold's testimony, which I credit, Crosby's carpenters never worked on the same project with Disney's men, after the August 23rd stoppage.

Testimony proffered by Crosby with corroboration by his carpenter foreman—which I credit, generally, despite their variances in recollection—reveals that there was a second work stoppage on Crosby's designated residential construction projects some two weeks later.

(Neither Griswold nor the general contractor were positive with respect to the date of this subsequent development. They testified that the stoppage could have occurred either on Friday, August 30th or September 6th. Since the stoppage, as we shall see, led to certain further developments on the Monday following—which would have been Labor Day, September 2nd, if the first date cited was correct—determination seems warranted that Crosby's second work stoppage took place on September 6th. My conclusion, with respect to its date, finds further support in dates which appear on certain docu-

ments subsequently signed by the general contractor, under circumstances to be noted.)

While Griswold and two carpenters were working on Crosby's second residential project, someone representing the respondent labor organizations visited the job site and told Griswold that he would have to "pull" Crosby's carpenters, since a Disney crew was then at work on the general contractor's third residential project. Griswold declared that he had not been aware of the fact. Departing to make a telephone call, the union business representative returned shortly, directed Griswold and his two carpenters to leave work, and told them, further, not to resume work until Crosby had signed the Four Bay Counties Carpenters Master Agreement, which he characterized as "our" contract.

(Griswold, though not positive, tentatively designated Respondent Honerlah—business representative of Respondent Local 162, San Mateo, specifically—as the union representative responsible for these directives. Crosby, though not present when his men were first "pulled" from their work, testified comprehensively regarding his subsequent conversations with Respondent Weare, at the job site, during the day. Honerlah, while a witness, was not questioned with respect to the matter. Respondent Weare, however, testified that he only "shut . . . down" Crosby's project once; he fixed August 30th as his shutdown date. Necessarily, therefore, his testimony would reflect a denial of responsibility for any subsequent shutdown. Since—with matters in their present posture—determination has been found warranted

that Respondent Weare "pulled" Crosby's carpenters on August 23rd, his testimony with respect to some August 30th shutdown must be rejected; clearly, however, Weare did not concede participation with respect to Crosby's September 6th difficulty. The present record—considered as a whole—will not, therefore, sustain definitive factual conclusions regarding the identity of the respondent business representative responsible for Crosby's second work stoppage. There can be no doubt, nevertheless, that such a second stoppage took place, and that some representative of the respondent labor organizations was responsible; I so find.)

Consideration of the record as a whole has convinced me—despite contradictory testimony proffered by Respondents' witnesses herein—that this was the first time any question had been raised regarding Crosby's status under the Four Bay Counties Master contract.

Griswold, I find, reported the stoppage to Crosby by telephone; during their conversation, further, he reported that a question had been raised with respect to Crosby's lack of status as a contract signatory under the Four Bay Counties master contract. Crosby, promptly, told Griswold to sign such a contract, as his deputy, or to procure a copy which Crosby would sign when he reached the project site.

The general contractor's testimony, which I credit in this connection, reveals that—some time after the work stoppage began—he reached his San Carlos job sites; there he had some extensive conversation with whichever union representative was present.

(Reference has already been made to Crosby's testimony that Respondent Weare was the person with whom he spoke. Griswold's testimony suggests that Honerlah may have been the man. While a witness, Respondent District Council's secretary recalled a course of conduct, on his part, which might warrant a conclusion that Respondent Local 162's assistant business representative, Sam Shannon, was, really, the union spokesman present. Shannon, since he was never summoned to testify, could not be questioned with respect to the matter. Whoever it was, I am satisfied that Crosby had a conversation with some responsible spokesman for the respondent labor organizations; it is so found.)

Crosby, confronted with a claim that he was not then privy to the Four Bay Counties master contract, protested that his lack of status as a contract signatory —with respect to the designated agreement specifically—had not previously been considered a matter of consequence; further, he contended that his lack of formal contractual privity should not be considered material, since he had been making required payments to various Four Bay Counties trust funds, routinely, for his carpenters. The general contractor was told, however, that he would have to sign a Four Bay Counties contract form.

Confronted with a protest by Crosby, further, that Respondent's course of conduct would prevent the completion—presumably by Disney's crew—of the slight amount of roof construction which remained to be done on his third residential project, Respondent's

representative suggested that shinglers qualified to complete the required roof work could be secured through Respondent Local 1408's hall.

On Monday, September 9th, Crosby telephoned Disney to request that the latter keep his crew off their last roof, and let Crosby provide workers to complete the roof's construction; Disney, reportedly, concurred. The general contractor, thereupon, dispatched Griswold to Respondent Local 1408's hall to secure shinglers. Griswold, however, found Weare still on vacation; the local's "office girl" had no qualified shinglers to dispatch. And meanwhile, Crosby's regular carpenters, waiting at the job site, refused to work.

Crosby reached San Carlos at 1:00 p.m., approximately, considerably disturbed over Respondent Local 1408's failure to supply him with needed shinglers. His testimony, which I credit, reveals that some unnamed "San Mateo union representative" then present at the job site suggested that he call Secretary Bartalini of Respondent District Council. This he did. Bartalini, seizing the conversational initiative, began to castigate Crosby as "unfair" because of his prior failure to sign the Four Bay Counties contract; concurrently, however, he took occasion to criticize Disney, likewise, because of his then-current District 50 contractual relationship. Crosby was queried with respect to why he did business with Disney. The general contractor countered with a protest that he had been promised shinglers qualified to complete the slight amount of roof construction work still

to be done on his third and last project, but that none had been provided. Respondent District Council's secretary, finally, directed Griswold and Crosby's other carpenters to resume work. Crosby, with his carpenter foreman, repaired to Respondent Local 1408's hall, where he signed a Bay Counties Carpenters Memorandum Agreement form. When they returned to Crosby's San Carlos job site, Griswold and his fellow carpenters did resume work.

Respondent Local 1408's hall, however, never did dispatch any shinglers to Crosby's last San Carlos residential project. Some two days later, the general contractor summoned Disney to finish the third project's roof. This was done. So far as the record shows, Respondents took no action calculated to forestall Disney's contract completion.

(3) Downey and Stewart

Donald R. Downey, an individual, doing business as Homes by Don Downey, functions as a licensed general contractor in the building and construction industry, with a Redwood City, California, headquarters. On Friday, November 1st, Respondent Weare contacted him at San Carlos, where he was building two homes. When questioned as to who would construct their roofs, Downey declared that he was not sure. According to his testimony—which has not been contradicted—Weare replied, "Don't let Disney do the roofing, otherwise there will be a picket out in front." With these words their conversation was terminated.

Frank Stewart functions as a general contractor, primarily at Half Moon Bay, California. There, during November, 1963, he was engaged in residential construction. Disney had been engaged as his roofing subcontractor; one truck load of Disney's shingles had been delivered to the job site. Shortly thereafter, Respondent Weare visited the project; he asked Stewart's carpenter foreman, Gino Bracciotti, who was doing the roofing. Bracciotti replied that Disney would be Stewart's roofer. Weare, I find, then told Stewart's carpenter foreman that:—

> . . . while they were doing the roofing we would have to get off the job. He didn't say exactly that, those words. I don't think he implied that he was going to force us. He said he was going to ask [us] to get off or something to that effect . . .

Actually, Stewart's carpenters completed their work before Disney's crew arrived; they were not on the job when the project's roof was constructed.

B. *Conclusions*

1. Issues

With matters in this posture, General Counsel contends, several questions must be resolved. These questions have been formulated, within General Counsel's brief, substantially, as follows:

> (1) Whether Respondents' course of conduct "induced or encouraged" various individuals, employed by persons engaged in commerce or in an

industry affecting commerce, to engage in the types of conduct specified within Section 8(b)(4)(i) of the statute, or, further, "threatened, coerced or restrained" any person engaged in commerce or in an industry affecting commerce, within the meaning of Section 8(b)(4)(ii) of the statute.

(2) Whether the Four Bay Counties Carpenters' Master Agreement and Northern California Standard Building Trades Agreement contained provisions which Section 8(e) of the statute proscribes.

(3) Whether Respondents' course of conduct—should it be found to include any type of conduct statutorily proscribed—was undertaken to pursue some "object" proscribed by Section 8(b)(4)(A) or (B) of the statute.

(4) Whether Respondents' course of conduct, following their decision to picket both Disney's principal place of business and various construction projects where Disney crews were either at work or scheduled to work, violated Section 8(b)(7)(C) of the statute.

General Counsel contends, with respect to these questions, that the record compels affirmative responses. Since counsel for Respondents, however, filed no brief, their present position with respect to these questions can only be deduced from their formal plea, considered with due regard for the nature of whatever testimonial and documentary defense they have presented.

2. Discussion

a. *Respondents' course of conduct*

General Counsel contends that the present record, taken as a whole, warrants a determination that Respondents engaged in—and induced or encouraged various individuals employed by Disney, his customers or suppliers, building contractors, and by "other persons" engaged in the construction industry, to engage in—strikes or refusals in the course of their employment to transport, handle or work on certain designated materials, or to perform services. Though Respondents, presumably, would press formal denials with respect to these contentions, no real try to controvert them, factually, has been made. Considered as a whole, the present record—with certain exceptions to be noted—would, indeed, seem to call for general determinations consistent with General Counsel's position.

(1) Conduct by pickets at Disney's yard

Respondents have, for example, conceded their placement of a picket before Disney's principal San Carlos office and place of business. Credible testimony which has not been contradicted, further reveals that Respondents' representatives have frequently followed Disney's delivery trucks to various residential construction projects. Likewise, testimony —proffered without denial—reveals that a known representative of Respondents picketed a residential construction project while Disney's workers were there working on the project's roof. Such a course of

conduct, chargeable to Respondents herein, was clearly calculated to induce or encourage Disney's workers—particularly those shinglers hired by him who were members of Respondent Locals or some affiliated Carpenters Union local—to cease work. I so find.

(Whether "inducement or encouragement" calculated to persuade *Disney's workers* to cease work should be considered within the proscriptions of Section 8(b)(4) or Section 8(b)(7) will be discussed later within this decision.)

There can be no doubt, further, that Respondents' San Carlos pickets "induced or encouraged" various individuals, working for some of Disney's customers and suppliers, to defer or refuse to make pickups or deliver materials within the picketed premises. Those drivers for Disney's customers and suppliers who did pick up purchased materials, or who did complete deliveries within Disney's yard—despite the picket's presence—presumably had their truck or carrier license numbers noted.

(Though testimony proffered for the record regarding such note-taking by Disney pickets has not been contradicted, no reliable, probative or substantial testimony has been proffered or received which would warrant a determination that such picket line conduct was *known* to those drivers for Disney customers and suppliers who crossed the picket line. Their knowledge with respect to the pickets' conduct and its purpose, therefore, could merely be deduced; such a deduction, presumably, would have to rest upon

nothing more than the fact that the picket's notes were recorded within everyone's view. Since a determination that various unknown drivers for Disney's suppliers and customers were, thereby, subjected to "inducement or encouragement" would thus necessarily have to derive from surmise, General Counsel's contention—that this particular type of conduct, chargeable to Respondents' pickets, should be considered within the statute's purview—must be rejected.)

With matters in this posture, determination clearly seems warranted that Respondents did engage in—and induced or encouraged workers employed by Disney, together with workers employed by his customers and suppliers, to engage in—strikes or refusals in the course of their employment, to transport, handle or work on materials, or to perform services.

There remain for consideration, however, serious questions whether such a course of conduct—when directed to *Disney's workers* specifically, or confined within the immediate vicinity of Disney's principal place of business—merits statutory proscription. These questions will be considered, later within this decision.

(2) Conduct directed to workers for neutral contractors

With respect to workers employed by various construction contractors—who dealt or proposed to deal with Disney as their roofing subcontractor—Respondents' participation in statutorily specified conduct would seem to be clear. Credible testimony,

certainly, presently warrants a determination that Respondent District Council and Respondent Locals —functioning through Business Representative Skoczylas and Respondent Weare specially—told both Frey and Crosby—within the presence of their employees—that carpenters working for them would be "pulled" from their jobs, should they permit Disney's crew to continue roof construction work then in progress pursuant to subcontracts. Thereafter, consistently with such threats, Skoczylas and Weare did—upon specified occasions—direct the carpenter foremen and carpenters employed by Frey and Crosby to quit work. Still later—so the record shows —Respondent Weare threatened to picket Downey's then-current residential construction project, should Disney subsequently be retained to do his roofing work. And—finally—Stewart's carpenter foreman was told by Respondent Weare that he, together with Stewart's journeymen carpenters, would have to "get off" their job when Disney's crew commenced work pursuant to previously-negotiated roofing subcontracts. Clearly, through the course of conduct described, carpenters employed by the contractors designated were "induced or encouraged" to cease work, within the meaning of the staute. I so find.

Within General Counsel's amended Consolidated Complaint, Respondents are charged, further, with "threats, coercion, or restraint" directed, specifically, toward those construction contractors with whom Disney did business. Testimony proffered with respect to these charges—which Respondents have not contro-

verted—likewise fully warrants a determination consistent with General Counsel's contention. Specifically, credible testimony reveals those threats which Business Representative Skoczylas directed to Frey, personally, that his carpenters would be "sent off the job" so long as Disney's men were doing roofing work; similar threats by Respondent Weare directed to Crosby, which were later carried out; threats directed to Downey, personally, that his then-current residential construction project would be picketed, should Disney later be retained to perform roofing work; and statements by Respondent Weare to Stewart's carpenter foremen that he, together with Stewart's journeymen carpenters, would be requested to "get off" their jobs, thereafter, while Disney's men were engaged in roof construction. With respect to both Frey and Crosby, Respondents' clearly-proven threats were, indeed, followed by specific orders or directions that their AFL-CIO carpenters and carpenter foremen should cease work; work stoppages resulted.

(General Counsel contends—within his brief—that such work stoppages, calculated to make it impossible for these contractors to carry on their normal business with Disney pursuant to subcontracts, should be considered "directly coercive" with respect to both contractors. *Highway Truckdrivers and Helpers, Local No. 107, International Brotherhood of Teamsters (Riss & Company, Inc.),* 130 NLRB 943, 946-947. This case, however, may not be germane, since nothing in the present record would seem to warrant a determination that particular work stoppages directed by Skoczylas and Weare, with respect to both Frey

and Crosby projects, then and there "made it impossible" for these construction contractors to carry on their business relationships with Disney, the primary employer herein. The Board—within the decision noted—disclaimed a purpose to imply, generally, that "any inducement or encouragement of a secondary employee" necessarily constitutes restraint and coercion of his employer. There can be no doubt, however, that the particular work stoppages for which Skoczylas and Weare were responsible, with respect to Frey and Crosby specifically, were really calculated to restrain and coerce both contractors, with respect to their manner of doing business. Both were—in fact—thus coerced. With matters in their present posture, therefore, General Counsel's contention in this respect must be considered meritorious.)

Clearly, with due regard for the present record, Respondents may properly be charged with "threats, coercion or restraint" directed to persons themselves in commerce or providing goods and services within an industry which affects commerce. I so find.

b. *Respondents' objectives*

Reference has been made to the General Counsel's contention that Respondents' course of conduct "induced or encouraged" various individuals employed by Disney, his customers or suppliers, and building contractors, to engage in strikes or refusals in the course of their employment to transport, handle or work on certain designated materials, or to perform services. A course of conduct reasonably calculated to bring

about such reactions, clearly, would merit Board interdiction, whenever pursued for purposes statutorily proscribed.

> (Section 8(b)(4)(A), so far as relevant, proscribes such a course of conduct where an object thereof is forcing or requiring "any employer" to enter into any agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. Section 8(b)(4)(B), so far as relevant, forbids labor organizations or their agents to pursue such a course of conduct for the purpose of forcing or requiring a secondary "neutral" employer to cease doing business with persons privy to some "primary" dispute.)

With matters in this posture, consideration must be given whatever specific purposes may have motivated Respondents' course of conduct. General Counsel has charged dual motivation; specifically, Respondents have been charged with a purpose to procure Disney's commitment to various contractual provisions statutorily proscribed; further, they have been charged with a purpose to force or require neutral general contractors to cease doing business with Disney, pending some concrete manifestation of his willingness to be bound by proffered contracts.

(1) Efforts to procure prohibited contractual commitments

There can be no doubt—upon the record—that Disney's business, both in the capacity of roofing subcontractor and building materials dealer, constituted Respondents' primary target. Since part of Respondents' course of conduct—specifically, that portion which involved the placement of a picket at Disney's San Carlos place of business, and certain conduct by the picket or pickets, together with their trailing of Disney's trucks to various construction sites—was clearly directed toward the resolution of Respondent District Council's *primary dispute* with the picketed employer, General Counsel's contention with respect to its proscribed character could not be sustained without a determination—consistent with Section 8 (b)(4)(A) of the statute—that Respondent District Council thereby was, really, seeking Disney's commitment to contractual provisions, which the statute forbids.

General Counsel contends that both the Four Bay Counties Carpenters' Master Agreement and the Northern California Building Trades Agreement, *inter alia,* contain such provisions.

(a) Threshhold considerations

Preliminarily—with respect to this contention—note should be taken that nothing in the record will warrant a determination, presently, that Respondent District Council, Respondent Locals and their representatives were particularly or significantly concerned

with the contractual "conscription" of Disney's cooperation—while functioning as a so-called "neutral" employer—relative to primary controversies which had arisen or might arise between respondent labor organizations and some "other" persons.

(Stating the matter differently, nothing in the present record will support a conclusion that Respondents were, *principally,* concerned with securing Disney's commitment to honor those particular contractual provisions which General Counsel has designated as within the statute's ban.)

Rather, Respondent District Council and Respondent Locals seem to have sought contractual privity with Disney, principally, for two different, related purposes. *First,* they wished to see him formally committed with respect to various substantive contractual provisions affecting his own workers, dealing with their wages, hours, fringe benefits, and conditions of work. *Secondly,* their course of conduct seems to have been calculated to compel or guarantee his concomitant transformation into a so-called "fair" subcontractor, with whom signatory general contractors would be contractually free to do business.

(Within his brief—with respect to the latter point—the General Counsel's representative has cited the notices which two of the Respondent Locals submitted for publication in the San Mateo County Union Gazette, various San Mateo Building and Construction Trades Council minutes, several statements which Respondent Weare and Business Representative Skoczylas made to Crosby and/or Frey, certain statements within

the letters which Respondent District Council had dispatched to general contractors signatory to the Four Bay Counties Carpenters' Master Agreement, and various grievances which Respondent District Council had subsequently filed against some such contractually-bound general contractors; these matters of record have been cited, presumably, to show that Respondents herein, throughout the period with which this case is concerned, considered such contractors legally committed to deal only with subcontractors—such as Disney specifically—who were themselves bound by the contract in question.)

There can be no doubt, however, that the documents with respect to which Respondents sought Disney's signature, presumably for the purposes stated, did contain some provisions, the terms of which—expressly or by necessary implication—would call for statutory proscription. With matters in this posture, the fact that Disney's commitment with respect to such provisions, particularly, may not have been the *prime object* of Respondents course of conduct, cannot be said to render such conduct privileged. *Truck Drivers Union Local No. 413, IBTCWHA v. N.L.R.B. (Brown Transport Corp. and Patton Warehouse, Inc.),* 55 LRRM 2878, 2879, enf'g in part 140 NLRB 1436, 1437; *N.L.R.B. v. Amalgamated Lithographers of America,* 51 LRRM 2093, 2101-2102. I so find.

(b) *The Carpenters' Master Agreement*

Section XIV(b) of the Carpenters' Master Agreement significantly restricts subcontracting by signa-

tory firms. Though Disney himself, *arguendo,* might not be very likely to subcontract roof construction work, this section would require him to concede the applicability of the Master Agreement's terms and conditions "to any subcontractor . . . providing services for or working under contract with [him] upon work covered" by the Carpenters' contract.

> (Conceivably, such a subcontractor could be another roofing contractor, to whom Disney might "farm out" roof construction work, or perhaps a local drayage firm engaged to provide truck service.)

And, since the provision in question states that the terms and conditions of the Carpenters' master contract, so far as they affect an "individual employer" signatory, "shall apply" with respect to such subcontractors, each of which "shall be considered" an "individual employer" subject to all of the contract terms, it clearly merits consideration as a so-called "union-signatory" subcontractor provision, rather than a mere "union-standards" subcontractor clause. I so find.

> (Testimony proffered by Respondent District Council's secretary shows, clearly, that he has construed the contract language now under consideration to require signatory contractors to use subcontractors who were, themselves, Master Agreement signatories.)

The second sentence of Section XIV(b) further provides that, whenever a subcontractor fails to make fringe benefit payments—to the "applicable" Trust

Fund office—with respect to workmen employed by him pursuant to the Master Agreement on a prime contractor's project, the latter shall be liable to make such payments or contributions, and shall be "entitled" to reimbursement from the defaulting subcontractor. This provision, necessarily, would penalize signatory employers—whether general or specialty contractors—who might choose to deal with nonunion subcontractors, since such signatory employers would be contractually committed to assume the contingent liability which the provision defines, should they do business with designated nonunion subcontractors. Realistically, therefore, such a provision would compellingly "require" signatory employers to deal only with subcontractors themselves willing to assume the obligation to make whatever fringe benefit payments and contributions the Carpenters' Master Agreement might require; thereby, signatory employers would clearly be restricted with respect to the class of subcontractors with whom they might deal. To paraphrase the Board's decision, with respect to another type of financial burden, within the *Brown Transport* case:—

> It is a method for making it difficult, expensive, and unlikely for an employer signatory to the agreement to [subcontract with nonunion subcontractors] . . . An employer who is permitted [to do business with subcontractors] should be able to do so in his accustomed manner. To saddle him with new obligations if he wishes to comply with the law is to penalize him for his observance. Nor is this device more palatable or persuasive because it seems to be directed toward the protection of employees.

Patently, what Respondents sought—through this contingent liability provision with respect to fringe benefit payments or contributions covering any subcontractor's workmen—was the effectuation of Respondent District Council's policy to discourage business relationships by contractual signatory firms with non-union subcontractors. And the means, direct or indirect, relied upon to accomplish such a policy or purpose, must be considered tainted by the illegality of its object. *Truckdrivers Union Local No. 413, IBTCHWA (The Patton Warehouse, Inc.),* 140 NLRB 1474, 1484-1485, 1498-1500. Previously, within this decision, Section XIV(b)'s first sentence has been found beyond the limits of legality set by Section 8(e) of the statute; since the further contractual "contingent liability" provision would be clearly calculated to implement or promote Respondent's illegal purpose, that provision, likewise, would seem to merit Board proscription. I so find.

Consistently with General Counsel's position, I find —further—that Section XIV(c) of the contract now under consideration, though purportedly a savings clause, cannot properly be considered sufficient to preserve the particular provisions herein found subject to prohibition; the clause in question, clearly, does not effectively defer Section XIV(b)'s operation. Not only does subsection (c) provide that (b)'s provisions *shall be operative* to the extent permitted by law, it further provides that "should any final determination of any Board or Court of competent jurisdiction affect" subsection (b)'s validity, the parties shall re-

negotiate such provisions. This language, necessarily, implies that the signatory parties mutually contemplate the present viability and current enforcement of subsection (b), unless and until its validity is questioned through some "final" determination. Such a purported savings clause, patently, cannot bar Board orders deemed necessary and proper.

Section XXI-A of the Carpenters' Master Agreement provides that signatory employers—whether general or specialty contractors—may not discharge their workers for refusal to cross a picket line established by an International Union affiliated with the AFL Building and Construction Trades Department, or a local union thereof, which has been "authorized or sanctioned" by the local Building and Construction Trades Council with jurisdiction over the area within which the job is located. This provision, likewise, falls within the scope of Section 8(e)'s prohibition—this time without regard to whether the signatory firm may or may not deal with subcontractors—since it would prevent signatory contractors, (a) from discharging workers who refuse to cross picket lines at *some other employer's* place of business, which picket lines may have been established by a union not the majority representative, or (b) from discharging workers who refuse to enter upon *any property* involved in a labor dispute, whether or not such dispute had resulted in strike action. *Truckdrivers Union Local No. 413 IBTCWHA (The Patton Warehouse, Inc.), supra,* pp. 1476-1482. To deny any Carpenters' contract signatory his privi-

lege of replacement with respect to workers who might thereafter refuse to carry out their assigned duties—where such a refusal could not be considered protected by Section 13 of the statute or the Section 8(b)(4) proviso—would, realistically, be to require such a contract signer to cease or refrain from handling the products of, or otherwise dealing with, the particular "other" employer whose products or services might have fallen under some labor organization's ban.

True, the Circuit Court of Appeals for the District of Columbia has, most recently, defined the thrust of the Section 8(e) prohibition found with respect to comparable picket line clauses, within the *Brown Transport* and *Patton Warehouse* cases, more narrowly than the Board's decision. *Truckdrivers Union Local No. 413, IBTCWHA v. N.L.R.B.*, 334 F. 2d 539, 55 LRRM 2878, 2879-2882. Substantially, the Court has declared that broad picket line clauses, like the one now under consideration, may be considered subject to Section 8(e)'s proscription only where they purport to protect workers against discharge or discipline for a refusal to cross picket lines established, demonstrably, for the purpose of promoting some secondary strike or boycott. The Board has given some indication that it may concede the correctness of the Court's view. *Cement Masons Local Union No. 97, AFL-CIO,* 149 NLRB No. 111. For present purposes, however, the Board's determination within the previously cited cases may still be considered determinative. Should the Court's view with respect to Section

8(e)'s limited prohibition of picket line clauses be found correct, Section XXI-A of the Carpenters' Master Agreement now under consideration would, nevertheless, still merit proscription. *Cement Masons Local Union No. 97, AFL-CIO, supra,* fn. 11. I so find.

(c) *The Northern California Standard Building Trades Agreement*

Like the Carpenters' Master Agreement, the Standard Building Trades Agreement significantly restricts the right of signatory employers to subcontract work.

For example, Section 2 of the contract provides, *inter alia,* that its terms "shall cover all work performed" for the signatory firm by any third party "under contract or otherwise" within the trade jurisdiction of the Building and Construction Trades Department and its subordinate bodies, the building and construction craft jurisdiction of those unions affiliated therewith, or within the building and construction trade jurisdiction of the Teamsters Union and its subordinate bodies:—

> . . . *including but not limited to,* construction, alteration, painting, repair or demolition, of a building, structure, or other works. (Emphasis supplied.)

Section 7 would commit signatory employers to contract or subcontract work, within Section 2's purview, only to some subcontractor "party to an executed,

current agreement" with the local Building Trades Council having jurisdiction over the job site, or some "appropriate" labor organization with work and territorial jurisdiction covering the area within which the work is to be performed. Further, Section 8 would require the signatory employer—when he contracts or subcontracts any work within Section 2's purview—to provide in his contract, with the contractor or subcontractor, that the latter shall be required to pay "all wages and fringe benefits" called for by "the" agreement with the appropriate labor organization mentioned in Section 2, previously noted. Should such contractor or subcontractor fail to pay whatever wages or fringe benefits may be called for by that agreement, the signatory employer shall be become liable for the payment of such sums.

Taken together, these Building Trades Agreement provisions would patently prevent a signatory employer from subcontracting work, within the Carpenters' Union trade jurisdiction, to contractors not privy to the Carpenters' Master Agreement, or to subcontractors not already bound either by the Building Trades Agreement or a contract with some "appropriate" craft union or Teamster Union local. Further, these provisions would bar signatory firms from contracts with a subcontractor guilty of a failure to pay wages or fringe benefits called for by "an agreement" proffered by some "appropriate" labor organization, absent a concurrent contractual commitment by the signatory employer to make good any default with respect to such payments.

For reasons previously noted—within my discussion relative to the propriety of Section XIV(b) of the Carpenters' Master Agreement specifically—these provisions of the Northern California Standard Building Trades Agreement must likewise be considered statutorily prohibited.

Beyond whatever contingent liability Section 8 would lay upon signatory employers doing business with subcontractors who default with respect to wage and fringe benefit payments, further provisions within the Building Trades Agreement would lay yet more burdens upon those who deal with noncomplying or nonunion subcontractors. Thus, Section 9 provides that, should any signatory's subcontractor violate the agreement, or any other contract which it incorporates by reference, the signatory shall be liable to pay the local Building Trades Council, with jurisdiction over the job site, liquidated damages in the sum of $50 for each violation, per employee involved, for each day the violation continues, plus actual and special damages. Section 13 provides, *inter alia,* that, should there be a dispute between any subcontractor of the signatory firm and any local Building Trades Council with jurisdiction over the job site, or any "appropriate" labor organization with job site jurisdiction, such Building Trades Council or labor organization may enforce the agreement. Then, under Section 14 of the contract in question, should a violation by any of the signatory's subcontractors be proven, the signatory employer would stand committed to pay any and all legal fees and expenses in-

curred in contract enforcement proceedings. Clearly, these sections of the challenged Building Trades Agreement must be considered closely related. When considered in context with other questioned clauses—specifically Sections 2, 7 and 8 previously noted—they provide the San Mateo County Building and Construction Trades Council, Respondent District Council, and Respondent Locals with a set of sanctions reasonably calculated to guarantee that signatory employers will not do business with nonunion or noncomplying subcontractors. Since, therefore, they form part of a group of commitments reasonably calculated to promote an illegal objective, they partake of that objective's illegality, and merit Board proscription. *N.L.R.B. v. Amalgamated Lithographers of America,* 309 F. 2d 31 (C.A. 9), 51 LRRM 2093, 2100-2101. I so find.

Section 17 of the Building Trades Agreement further provides, *inter alia,* that, should any subcontractor of the signatory employer fail to abide by provisions of "the appropriate agreement in the area of the job site," the signatory Building Trades Council may terminate their contract; further, the signatory employer stands committed to a promise that his employees may refuse to perform any work for him or enter upon his premises without being subject to discharge or other disciplinary action for their refusal. Section 19 provides that "during the time of any violation of any of the provisions of this agreement" by any subcontractor of the signatory firm, the local Building Trades Council and craft unions with work

and area jurisdiction shall be released from any obligation to furnish the signatory employer with workmen. These provisions—since they purport to render a signatory employer subject to sanctions for failures by subcontractors to comply with supposedly relevant contracts—must likewise be considered encompassed within Section 8(e)'s prohibition. They form component parts of a contract directed, in significant part, to the realization of purposes which the statute proscribes. As previously noted, contract clauses which—specifically or by necessary implication—provide sanctions which a union may invoke to enforce other, unlawful, clauses must, themselves, be considered invalid. *N.L.R.B. v. Amalgamated Lithographers of America, supra,* 51 LRRM 2093, 2101. General Counsel's contention with respect to this aspect of the present case, therefore, merits Board concurrence.

Finally, the General Counsel challenges the Building Trades Agreement because it contains two "picket line" clauses comparable with the Carpenters' Master Agreement clause previously found subject to Board proscription.

Section 11 of the contract now under consideration provides that no employee covered thereby may be discharged or subjected to discrimination, (a) for refusing to pass an authorized picket line, or (b) for refusing to work on a job site at which persons are employed, on work covered by the Building Trades Agreement, who are not under a contract with the local Building Trades Council or some "appropriate" labor organization. Section 18 further provides, *inter*

alia, that no employee shall be required to cross any picket line or enter any premises at which there is a picket line authorized or approved by any local Building Trades Council or labor organization with work and area jurisdiction, or by any central labor body with jurisdiction over the job site area; signatory employers likewise stand committed not to assign or require any worker covered by the Building Trades Agreement to perform any work or enter any premises under such circumstances.

Like the comparable clause within the Carpenters' Master Agreement previously discussed, these Northern California Standard Buildings Trade Agreement provisions must be considered within the scope of Section 8(e)'s prohibition, since they permit conduct calculated to bring secondary pressures to bear upon "neutral" signatory employers. *The Patton Warehouse, Inc., supra.* Further, Section 11(b) of the Building Trades Agreement would permit—regardless of the absence of a picket line—union sponsored refusals to work, calculated to bring pressure upon signatory employers which would force or require them to refrain from doing business with any or all contractors on a job site whenever any contractor on the same job employs nonunion workers, or fails to show contractual privity with a local Building Trades Council or some "appropriate" craft union or Teamsters Union local. Substantially, by seeking to procure contractual commitments from Building Trades Agreement signatories whereby construction jobs may be made or kept completely

"union" and whereby such employers may be limited to work only upon so-called "fair" jobs, Respondent District Council and Respondent Locals have sought confirmation of their right to conscript such contract signatories as "allies" relative to their possible future disputes with some completely unrelated employer who may happen to have a crew at work on the same job site. Contractual provisions which, by their terms, would require signatory firms—patently neutral with respect to some primary dispute between a craft labor organization and another person—to cease doing business with other persons, encompass precisely the type of consensual commitment which Section 8(e) forbids.

(d) *Significance of Section 8(e)'s construction industry proviso*

Though Respondents have filed no brief, their testimonial presentation suggests a possible contention that Section XIV(b) of the Carpenters' Master Agreement and Sections 2, 7 and 8 of the Building Trades Agreement should be considered privileged, pursuant to Section 8(e)'s first proviso.

> (Under that proviso, statutory prohibitions spelled out within the section do not apply to agreements between unions and construction industry employers relative to contracts or subcontracts for *work to be done at the site* of the construction, alteration, painting, or repair of a building, structure, or other work.)

Any such contention, however, must be rejected. Since Section XIV(b)'s first sentence cannot be con-

sidered specifically limited to site work, no protection for this portion of the provision can be derived from the proviso. Further, although the section's second sentence does purport to create contingent liabilities for a signatory employer merely with respect to fringe benefit payments or contributions for his subcontractor's workmen when employed "on the project of a prime contractor or prime builder," nothing within the contractual language in question specifically confines its thrust to the creation of such liability merely for workmen "at the site" of the prime contractor's project. Likewise, Sections 2, 7 and 8 of the Building Trades Agreement, which purports to circumscribe the right of signatory employers to contract or subcontract work, cannot be considered to limit such rights merely with respect to "site" work.

> (Section 2, indeed, provides specifically that its limitation upon the right of a signatory employer to contract or subcontract covers all work performed for the signatory employer *"including but not limited to"* construction, alteration, painting, repair or demolition, of a building, structure or other works.)

There are persons who perform services for general contractors engaged in construction work, who are not engaged in "site" work such as that contemplated by Section 8(e)'s proviso. Cf. *Local 282, IBTCWHA (Precon Trucking Corp.)*, 139 NLRB 1077. Further, testimony herein shows that Disney's Carlmont workmen—though primarily engaged in tar and gravel roof construction—customarily spend an hour or two,

at Disney's yard doing preparatory work. His Cedar Supply truckdrivers routinely deliver shingles together with other materials needed to his roofing contract job sites. None of this can be considered "site" work within the proviso's scope. Since Sections 2, 7 and 8 of the Building Trades Agreement must be read as they stand—and, so read, would clearly cover work not confined to construction "sites" when done for Disney pursuant to a contract or subcontract—they cannot be considered protected by Section 8(e)'s construction industry proviso.

Nor can the remaining Building Trades Agreement sections, previously found subject to statutory proscription, be considered thus protected. Sections 9, 13 and 14 within the contract in question—which have been found calculated to burden signatory employers whenever their subcontractors have been confronted with some legal challenge based upon purported violations of the Building Trades Agreement or some other relevant contract—reflect no purpose to limit such burdens merely to cases which derive from disputes or claimed contract violations connected with work at specific job sites. Sections 17 and 19 likewise —which purport to permit certain types of unilateral "self-help" conduct or contract termination, by represented workmen or contractually bound labor organizations, whenever subcontractors of the signatory employer have violated the provisions of some relevant contract—likewise reflect no limitation of these rights to situations involving contract violations at specific job sites. With matters in this posture, the

provisions in question—clearly—cannot be considered privileged because of Section 8(e)'s proviso. I so find.

Section XXI-A of the Carpenters' Master Agreement and Sections 11 and 18 of the Building Trades Agreement purported—by their very terms—to privilege picket line observance and refusals to work by contractually-covered workmen not confined, (a) to the premises of employers in the construction industry, or (b) to job sites which involve construction, alteration, painting, repair or demolition, of a building, structure or other works. Certainly, no claim can be made, legitimately, that such provisions should be considered privileged, within the meaning of Section 8(e)'s proviso.

The section was, clearly, designed by Congress to proscribe, generally, contracts or agreements, express or implied, calculated to define restrictively those "persons" with whom contractually-bound employers might do business. Though the Section's first proviso, therefore, purportedly saves, from its prohibitory thrust, contracts between unions and construction industry employers relative to the contracting or subcontracting of work to be done at construction sites, parties to collective bargaining contracts may claim proviso-granted privileges only when their contractual commitments conform, *precisely,* with those which the proviso permits.

(e) *Conclusions*

With due regard for the record, taken as a whole, there can be no doubt that Respondents' course of conduct had, for its object, forcing or requiring Disney to become a Carpenters' Master Agreement and Building Trades Agreement signatory. When Disney asked Respondent Honerlah, during their conversation at his San Carlos yard, what he would have to do to procure a removal of the picket who had just been stationed there, he was told that he would first have to sign the contracts designated. The language of the picket's sign; the tenor of Rsepondent District Council's several letters to contractors bound by the Carpenters' Master Agreement; the substance of various notices which representatives of Respondent Locals 1408 and 162 provided for the San Mateo County Union Gazette to publish; various minutes of San Mateo County Building and Construction Trades Council proceedings during which Respondents' representatives were present—all of these, taken together, will likewise justify a determination that at least "an" object of Respondent's so-called "primary" pressure tactics was to force or require Disney to sign both contracts which Respondent Honerlah proffered for his consideration.

(Some testimony proffered in Respondents' behalf would suggest a possible contention that their decision to establish a picket line, together with their related "primary" conduct, was calculated to persuade Disney to make certain retroactive wage payments, previously withheld, covering a period subsequent to the previously-

negotiated Master Agreement's effective date. This contention, however, deserves short shift. *First,* Respondents have made no contention that Disney, himself, was ever told retroactive wage payments would be required to procure the picket line's removal. *Secondly,* no reference to Disney's purported responsibility for such retroactive wage payments seems to have been made, by spokesmen for respondent labor organizations, in any context or on any occasion other than the brief get-together of Disney workers which preceded the placement of the picket line. *Thirdly,* whatever liability Disney might conceivably have had with respect to retroactive wage payments would necessarily have had to rest upon some sort of prior contractual commitment; no reliable, probative or substantial evidence has been provided, however—within the present record—which would warrant a conclusion (a) that Disney was really privy to contracts pursuant to which he could legitimately be held responsible for retroactive wage payments, or (b) that respondent labor organizations considered him thus contractually bound.)

Certainly, the present record will never support a determination that Respondents merely sought the commencement of negotiations. Disney was given the standard printed forms of contract which other contractors within the Four Bay Counties and San Mateo County area had, generally, signed; concurrently, he learned that he would be required to accept their terms before Respondents' picket line would be removed. With matters in this posture, determination clearly seems warranted that Respondents,

thereby, violated Section 8(b)(4)(i)(ii)(A) through their course of conduct calculated to force or require Disney to "enter into" contracts containing various provisions which Section 8(e) prohibits. I so find.

(2) Efforts to procure the termination of current business relationships

The present record, further, clearly warrants a determination that respondent labor organizations and their representatives, both, (a) threatened to strike various construction projects maintained by general contractors—Frey, Crosby and Downey, specifically—completely neutral with respect to their Disney dispute, and (b) induced and encouraged various journeymen carpenters working for the designated general contractors, together with Stewart's carpenter foreman to cease work, immediately or prospectively, for the purpose of forcing or requiring Frey, Crosby, Downey, Stewart and other general contractors to cease doing business with Disney, functioning as their roofing subcontractor.

(Respondents' testimonial presentation—specifically that proffered by Respondent District Council's secretary—suggests a contention that Crosby's carpenters, particularly, were "pulled" from their work by Respondent Weare solely because of Weare's discovery that Crosby, though functioning as a general contractor in San Mateo County, had not yet signed the Four Bay Counties Carpenters' Master Agreement, himself. The present record, however, considered as a whole, will warrant Board rejection of this contention.

Weare's concern with respect to the compliance status of Crosby's residential construction projects, I find, derived primarily from the general contractors' prior decision to contract with Disney's crew for roof construction. His supposedly belated realization that Crosby was not a Four Bay Counties contract signatory—which Respondent District Council's secretary subsequently purported to confirm—clearly reflects, when viewed most favorably, nothing more than a serendipitous "discovery" that—should Crosby's residential construction projects have to be struck—some pretextual justification for Respondents' course of conduct, without relation to Disney's presence, could presumably be cited. Bartalini's testimony, certainly, would warrant a determination that Respondent Weare was surprised to learn, *some time after his first contact with Crosby's project,* that the latter was not a contract signatory; he quoted a report by Respondent Local 1408's business representative that, "Bart, I am here on the Crosby job . . . By golly, they haven't got any agreement according to our records." Such a comment, clearly, would justify a conclusion that prior knowledge relative to Crosby's nonsignatory status had not, really, motivated Weare's project visit. I so find.)

Shortly after Disney's reluctance to "bring [his] firm [into] compliance" with the newly-negotiated Four Bay Counties Carpenters' Master Agreement had become clear, Bartalini's October 2, 1962, letter—directed to all contractors covered or signatory to the contract in question—had declared Respondent District Council's intent to enforce Section XIV(b) thereof, particularly with respect to work which Dis-

ney was performing or had performed. Some days later, Peninsula General Contractors and Builders Association was specifically advised that Disney had "seen fit, after many years," to ignore Respondents' master contract, and sign a District 50, United Mine Workers, agreement. The Association's secretary was told of Respondent District Council's determination to enforce its contract in every respect, and was advised to apprise the Association's membership of the Council's position, so that "unpleasantries" might be avoided. On May 29, 1963, contractors covered or signatory to the Four Bay Counties master contract were further told that—since the dispatch of Respondent District Council's October 2nd letter—the Council had learned that "a certain contractor covered by or signatory to our master agreement" had subcontracted certain jobs to Disney "in violation of" the master contract's provisions; all contractors were, therefore, advised of the Council's intention:—

> . . . to obtain through the grievance procedure of the Master Agreement full compensation, from the contractor covered by or signatory to our Master Agreement, for all employees covered by the Master Agreement who were not employed by reason of the acts of that contractor's subcontractor . . .

together with all other remedies available under Section XIV of the contract in question. Grievance proceedings, pursuant to this declaration, were subsequently begun against eight designated contractors. This course of conduct, chargeable to Respondent District Council, clearly revealed its purpose generally,

to force or require general contractors, covered by or signatory to the Four Bay Counties Carpenters' Master Agreement, to cease or refrain from dealing with Disney for roofing work. In pursuit of this objective, Respondent District Council had resorted first to warning letters bottomed upon contract—capped with the veiled threats, previously noted, regarding possible "unpleasantries" and prospects of recourse to "all other remedies available" under the contract—then to the contractual grievance procedure.

Since these efforts did not appear to have been completely successful, Respondents' representatives later threatened Frey and Crosby with work stoppages calculated to force or require their removal of roofing subcontractor Disney from various residential construction projects, and their cancellation of subcontracts with Disney, previously negotiated. They further threatened to picket Downey's project, should he thereafter contract with Disney for roof work; substantially, Respondent Weare later "instructed" carpenters employed by Stewart that they (Stewart's workmen) would be expected to remove themselves from Stewart's job site when Disney's crew performed previously subcontracted work. Finally, when Crosby and Frey failed to heed whatever threats had been made, Respondents' representatives ordered various AFL-CIO carpenters working for the general contractors designated, together with their carpenter foremen, to cease work.

With matters in this posture, determination clearly seems warranted that Respondents—confronted with

Disney's patent reluctance to become a Master Agreement signatory—finally had recourse (a) to "inducement and encouragement" of workmen employed by neutral contractors to engage in work stoppages, and (b) to "threats and coercion" directed to such contractors, for the specific purpose of forcing or requiring Frey, Crosby, Downey, Stewart, and contractors within the building and construction industry generally, to cease doing business with Disney, functioning as a roofing subcontractor.

(During the hearing, testimony was proffered and received which would presumably warrant a determination that Respondents had dispatched a picket to patrol at least one residential construction project, designated merely as the McCarthy job, while Harry Oneto was doing some roof work for Disney there. General Counsel has not, *specifically,* challenged such conduct as an unfair labor practice. Within his Amended Complaint, however, there is a charge that Respondents have "induced or encouraged individuals employed by . . . other persons engaged in commerce or in industries affecting commerce" to cease work. Since the circumstances leading to the picket's presence near the McCarthy job, together with its consequences, were litigated, some question could conceivably be raised with respect to the propriety of the picket's conduct. Should any contention be made, however, that his conduct merits condemnation as an unfair labor practice, I would be disposted to recommend its rejection; so far as the record shows, the picket's conduct, within the vicinity of the McCarthy project, seems to have comported with *Moore Drydock* standards.)

With respect to both Frey and Crosby, presumably, Respondents successfully realized their objective. Though Frey does not seem to have cancelled his previously-negotiated contract with Disney for roof work, and testified that he had refused to promise he would not use Disney again, he did—while a witness—declare that, before he did, he would give the matter very "serious" consideration. And Crosby, though not currently committed with respect to any San Mateo County construction project, likewise declared, while a witness, that he would not use Disney any more. With matters in this posture, there can be no doubt, whatever, that General Counsel has sustained his burden of proof—relative to Section 8(b)(4)(B) of the statute—with respect to Respondents' participation in a proscribed course of conduct, for statutorily prohibited objectives. I so find.

The record does show that Frey, specifically, was—throughout the period now under consideration—privy to the Four Bay Counties Carpenters' Master Agreement by virtue of his Peninsula General Contractors and Builders Association membership; necessarily, therefore, determination would be warranted that he was throughout, voluntarily committed—pursuant to Section XIV(b) of the contract in question—not to deal with "unfair" subcontractors.

(Crosby, presumably, did not become privy to such a contractual commitment until he became a Memorandum Agreement signatory *subsequent to the work stoppages* which had affected his San Carlos residential construction projects. The record is silent regarding the status of Downey

and Stewart with respect to Carpenters' Master Agreement coverage).

Frey's contractual commitment, however, cannot provide Respondents with legal exculpation; previously, within this decision, determination has been made that the contractual provision noted cannot be considered privileged because of Section 8(e)'s construction industry proviso. *Arguendo,* should a contrary determination be considered warranted, Section XIV(b) could not—in any event—provide Respondents with a defense for their participation in conduct which Section 8(b)(4)(B) proscribes. See *Construction Laborers Local 383 v. N.L.R.B.,* 54 LRRM 2246, 2248 (C.A. 9) reversing *Colson and Stevens Construction Company,* 137 NLRB 1650; *Nichols Electric Company,* 138 NLRB 540, enf'd *sub nom, N.L.R.B. v. Local 825, International Union of Operating Engineers, AFL-CIO,* 55 LRRM 2112, 2115 (C.A. 3) in this connection.

(c) *Respondents' picketing for recognition*

The statute's Section 8(b)(7)(C), considered in relevant part, forbids labor organizations or their agents to picket any employer, or cause him to be picketed, where "an" object of such conduct is:—

> . . . forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees . . . unless such labor organization is currently certified as the representative of such employees . . . where such picketing has been conducted without a petition under Section 9(c) being filed within a reasonable

> period of time not to exceed thirty days from the commencement of such picketing,

When the hearing in this case was held, Respondents had been maintaining their picket line before Disney's San Carlos yard for nine months; so far as the record shows, such picketing has never been suspended. None of respondent unions has ever been certified to represent Disney's workers, and no petition for certification with respect to such workers, under Section 9(c) of the statute, has ever been filed.

With matters in this posture, participation in statutorily proscribed conduct by the respondent labor organizations and their representatives would seem, *prima facie,* proven. Despite their formal denials, noted for the record, Respondents have not disputed testimony which would reasonably warrant a determination regarding their responsibility for maintaining the challenged picket line.

> (While a witness, Respondent District Council's secretary, clearly, conceded Council responsibility for the picket line's placement. Respondent Locals Nos. 162 and 1408 likewise—because of particular statements and conduct properly chargeable to their business representatives, Respondents Honerlah and Weare, respectively—clearly seconded Respondent District Council's decision. Finally, Respondent Local No. 828's liability must be considered derived, from that body's affiliation with Respondent District Council, plus Business Representative Skoczylas' course of conduct, previously noted, calculated to support Council's purpose to put pressure upon Disney for statutorily prohibited objectives.)

Further, throughout the period with which this case is concerned, Respondents' course of conduct—with respect to picketing—was patently calculated to force or require Disney to recognize and bargain with Respondent District Council and its constituent locals as the representatives of his workers. That such was their "immediate and present" purpose cannot be doubted. Reference has already been made to my determination in this respect, bottomed upon Respondent District Council's correspondence with various San Mateo County contractors and the Peninsula General Contractors and Builders Association; the grievances which it filed against designated contractors; various notices which its two constituent locals submitted for publication by the San Mateo County Union Gazette; statements made during the course of several Council meetings; comparable statements reflected in the minutes of several San Mateo Building Trades Council meetings; various statements made by Respondent Weare and Business Representative Skoczylas to Crosby and Frey respectively; prior statements which Respondent Honerlah had made to certain Disney employees during their July 15, 1963, meeting; and Honerlah's July 18th demands, which he directed to Disney, personally, when the picketing began. Likewise, reference should be made to the language of the picket sign, itself, wherein Disney was designed "unfair" because of his refusal to sign Respondent District Council's proffered contract. Specifically, therefore, determination is presently warranted—I find—that Respondents established and maintained their San Carlos picket line for the purpose of forcing or

requiring Disney to "sign" the Bay Counties Carpenters' Master Agreement and Memorandum Agreement, together with the Northern California Standard Building Trades Agreement. So far as the present record shows, Respondents have never, throughout their dealings with Disney or his representatives, disclaimed these objects.

> (Though the testimony does show that Disney was given a copy of the Carpenters' Master Agreement by Respondent Honerlah, record testimony fails to establish, clearly, that his signature was demanded with respect to that document. Rather, I find, he was requested to sign the Memorandum Agreement which, by its terms, would have required his "compliance" with the master contract. I so find.)

There is documentary evidence, together with a concession by counsel, within the record, which would warrant a conclusion that Respondents' counsel—through correspondence with Regional Office personnel and statements made in United States District Court during a Section 10 (l) injunction proceeding—may have disavowed any *present* purpose by respondent labor organizations to procure Disney's signature for the Building Trades Agreement noted. Consideration of the record, as a whole, however, has convinced me that—during their July 18, 1963 conversation—Respondent Honerlah did submit a copy of the last-designated contract for Disney's signature, not merely for his perusal. Nothing in the record will support a determination that Disney, himself, was ever subse-

quently told that Respondents wished to disavow or withdraw Honerlah's demand.

Should the Board, however, consider the present record less than probative with respect to Respondents' wish for Disney to become a Building Trades Agreement signatory, determination would still be warranted, clearly, that their picket line was established and maintained to procure Disney's signature for their Memorandum Agreement, which would, necessarily, establish his contractual privity with respect to Respondent District Council's master contract.

While a witness, Respondent District Council's secretary freely conceded that, should Disney's signature for the document in question be procured, Respondents' picket line would be removed.

So far as their testimonial presentation goes, Respondents seemingly contend, however, that their picket line—despite their recognitional objective—was established for "informational" purposes which Section 8(b)(7)(C)'s second proviso protects. That portion of the statute provides:—

> That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity *for the purpose of truthfully advising the public (including consumers)* that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any

goods or not to perform any services. (Emphasis supplied.)

Respondents would, presumably, argue that their picket line's purpose was limited to that which the quoted language sanctions. For reasons to be noted hereinafter, however, such a contention must, perforce, be rejected.

When this agency was first called upon to consider the significance and scope of Section 8(b)(7)(C)'s second proviso, two Board members declared, in dissent, that:—

> From the structure of the section as it emerged from conference, it seems clear that Congress intended to permit a kind of picketing which, but for the proviso, would have come within the prohibition of the section. It logically follows that the intent was to exclude from the ban picketing which, while it embraced the proscribed object of recognition or organization, was nonetheless permitted because it met two specific conditions. *The first condition was, as already stated, "of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with; a labor organization."* The second condition was added immediately after the first, i.e., "unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment not to pick up, deliver or transport any goods or not to perform any services." In other words, Congress by way of compromise, excluded from its prohibition recognitional or organizational picketing that met these two conditions. (Emphasis supplied).

This view with respect to the proviso's thrust subsequently became decisional doctrine. *Local Joint Executive Board of Hotel and Restaurant Employees and Bartenders International Union of Long Beach and Orange County, et al., (Crown Cafeteria)*, 135 NLRB 1183, adopting on reconsideration the dissent in 130 NLRB 570, 574-577. Left for subsequent "elucidation" however, were questions with respect to those circumstances—related to picketing or other publicity—which might warrant a determination that such conduct was not for "the" purpose of truthfully advising the public.

In a subsequent case—*Local 3, International Brotherhood of Electrical Workers (Jack Picoult)* 137 NLRB 1401—the Board rejected the respondent union's proviso defense, finding, upon several stated grounds, that picketing therein challenged failed to satisfy the first of the two conditions previously noted, since it was not "for the purpose of truthfully advising the public" but was, rather, focused on the employees of secondary employers. When the Board petitioned for court enforcement of its cease and desist order, however, the Court of Appeals for the Second Circuit found the Board's basis for this conclusion less than clear, and remanded the case for "more adequate findings" with respect to this aspect of the matter. *N.L.R.B. v. Local 3, IBEW*, 317 F. 2d 193, 196 (C.A. 2). Within the Board's subsequent decision on remand, the court's view with respect to the thrust of Section 8(b)(7)(C)'s second proviso, in relevant part, was summarized as follows:

> For recognitional or organizational picketing to be privileged under the second proviso it must, *inter alia,* "be for the purpose of truthfully advising the public." The court explained that the proviso "gives the union freedom to appeal to the unorganized public for spontaneous popular pressure upon an employer; it is intended, however, to exclude the invocation of pressure by organized labor groups or members of unions, as such." *N.L.R.B. v. Local 3, IBEW, supra,* footnote 2 at page 198. Accordingly, the court continued, in determining whether the picketing is "for the purpose of truthfully advising the public," it is necessary to ascertain the Union's tactical purpose. *Was it seeking a response from the public at large, or from organized labor groups?* If the former, the court stated, the picketing is privileged by the proviso unless it communicates more than the limited information permitted thereby, or it in fact has an effect on deliveries; *if the latter, the picketing is not privileged irrespective of its actual effects.* (Emphasis supplied.)

This construction of relevant proviso language—set forth within the court's remand decision—met with the Board's complete concurrence. *Local 3, IBEW (Jack Picoult),* 144 NLRB 5, 6; *Ibid.* footnote 5, and cases therein cited. The Court of Appeals for the Ninth Circuit has, likewise, noted its agreement. *Crown Cafeteria v. N.L.R.B.,* 327 F. 2d 351 (C.A. 9), 55 LRRM 2302, 2304. For present purposes, we may consider the construction noted definitive.

Considered with due regard for these decisional principles relative to the second proviso's construc-

tion, Respondents' challenged conduct, herein, cannot be considered privileged; upon the present record, I find myself constrained to conclude that circumstances related to their establishment and maintenance of the picket line now in question, rather, reveal their "tactical purpose" to be something more than the promotion of a mere publication "designed to influence members of the unorganized public" as individuals. Since Respondents' picket line, rather, seems to have been, partially at least, aimed at "organized labor groups which, at a word or signal from the picketeers, would impose economic sanctions upon the employer" they cannot, now, invoke the proviso's protection.

Before Respondents' picket was placed, Local No. 162's business representative had solicited Disney's workers, who were Carpenters Union members, to leave their work, and to respect the projected picket line. Record testimony likewise reveals that Respondents' designated picket regularly commenced his patrol each morning before some of Disney's workers were due to report. Normally, the picket would station himself in front of Disney's office, which some of the picketed firms' employees regularly entered, as did employees of Disney's suppliers and customers. Within one notice published in the San Mateo County Union Gazette, under Respondent Local No. 1408's *imprimatur*, Carpenters Union shinglers working for Disney were warned, further, that his refusal to sign Respondent District Council's contract meant that they would not receive any fringe benefits, since employers not contract signatories were not permitted

to make fringe benefit fund contributions. Considered as a whole, therefore, the present record will clearly warrant a determination that Respondents have urged, requested and warned Disney's employees—as Carpenters Union members—to honor the picket line.

Further evidence of Respondents' purpose to induce Disney's employees—*as interested participants in the dispute*—to leave their work, may be found in the record's revelation that Harry Oneto—so far as the testimony shows Disney's only remaining employee with Carpenters' Union membership—was picketed while working for Disney, threatened with a union citation, cited and finally fined, purportedly for violations of the Carpenters' Union Constitution and Laws, and Respondent District Council's By-Laws, in that he worked for Disney behind a "duly authorized" picket line.

> (While a witness, Bartalini described "duly authorized" picket lines as those which a Central Labor Council, Building Trades Council, or Respondent District Council had approved or sanctioned. And there can be no doubt—upon the present record—that Respondent District Council, throughout the period with which this case is concerned, had sanctioned and continued to sanction the Disney picket line. Further, despite a lack of definitive proof that the picket line in question has ever been *formally* sanctioned by the San Mateo County Building and Construction Trades Council, determination that it was, really, sanctioned by that body would seem to be warranted. Such sanction may logically be inferred, I find, from: (1) the presence and participation of several Building Trades Council officials at

the July 15, 1963, meeting when Respondent Honerlah spoke to Disney's workers; (2) the presence of a Building Trades Council representative near Disney's yard to observe the picket line on the morning when it was established; and (3) the notations within various minutes of Building Trades Council meetings, wherein Disney was called "UNFAIR" and the report was made that he had been placed on the body's "DO NOT PATRONIZE LIST" with his yard "picketed" until a contract is signed.)

Moreover—with respect to union members working for other persons—Respondents took no positive measures calculated to forestall any possible interruptions of customer pickups and supplier deliveries at Disney's yard, caused directly by *driver* reactions to the picket's presence. Cf. *Barker Brothers Corp. and Gold's Inc.,* 138 NLRB 478, 486, enfd. 328 F. 2d 431 (C.A. 9), 55 LRRM 2544; *Martino's Complete Home Furnishings,* 141 NLRB 503, 504, footnote 2; *Retail Clerks Union, Local No. 1404, AFL-CIO (Jay Jacobs Downtown, Inc.),* 140 NLRB 1434, 1435-1436. Testimony proffered in the General Counsel's behalf, which Respondents made no effort to supplement, reveals, indeed, only one occasion when their picket told a driver that he (the picket) was *not* trying to keep drivers out of Disney's yard.

(Though Respondents' failure to take *positive* measures in this respect, were it to be considered in isolation, might not *alone* justify a determination that their picket line "was not directed at achieving the limited purpose of communicating with the public" but was tactically calculated to

be "precisely that 'signal' to organized labor" which Congress sought to curtail, there can be no doubt that, considered in context, Respondents' nonfeasance in this regard forms part of a course of conduct which will support such a determination.)

To the contrary, credible testimony, which Respondents made no effort to contradict, reveals that, once at least, their picket informed a customer's driver that, if the picket line was sanctioned by his Teamsters Union local, he had better not go through. And further testimony, proffered without contradiction, warrants a determination that President Schwab of Teamsters Union Local No. 216, concurrently the San Mateo County Building and Construction Trades Council president, told the manager of one Disney supplier that, though the Disney picket had been posted for informational purposes, he had Building Trades Council sanction and should be "recognized" as a "regular" picket. Considered as a whole, this body of credible testimony clearly warrants a conclusion that Respondents' picket line was calculated to evoke responses from organized labor—whether employed by Disney or by other firms—and that it was not conducted, merely, "for the purpose of truthfully advising the public" with respect to the nature of their labor dispute. *N.L.R.B. v. Local 3, IBEW (Jack Picoult)*, 339 F. 2d 600 (C.A. 2), 58 LRRM 2095, 2096; *Hoisting and Portable Engineers Union, Local 101 (Sherwood Construction Company, Inc.)*, 140 NLRB 1175, 1179; *Automotive, Petroleum and Allied*

Industries Employees Union, Local 618 (Charlie's Car Wash), 136 NLRB 934, 936-937. I so find.

Since—for these reasons—Respondents' picket line cannot be considered protected by Section 8(b)(7)(C)'s second proviso, General Counsel's contention that Respondents' picket line failed to satisfy the proviso in other respects, as well, need not be considered. Specifically, no determination need be made—with matters in this posture—regarding General Counsel's contention that Respondents cannot properly claim the proviso's protection because the picket's presence caused a disruption of normal pickups and deliveries by employees of other persons substantial enough to interfere with Disney's business.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent Council, Respondent Locals, and their designated representatives, set forth in Section III above—since they occurred in connection with the business operations of Wilber F. Disney, and various general contractors within the building and construction industry, previously noted—have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states; absent correction they would tend to lead, and in this instance have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Since it has been found that the designated respondent labor organizations and their representa-

tives did engage, and continue to engage, in certain unfair labor practices, it will be recommended that they cease and desist therefrom, and take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act, as amended.

CONCLUSIONS OF LAW

In the light of these findings of fact, and upon the entire record in this case, I make the following conclusions of law:

1. Wilber F. Disney, doing business as Disney Roofing and Material Company; Disney Cedar Supply Co., Inc.; and Carlmont Roofing Co., collectively constitute an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

2. Bay Counties District Council of Carpenters, AFL-CIO, together with its constituent Carpenters Union Locals No. 162, No. 828, and No. 1408, are labor organizations within the meaning of Section 2(5) of the Act, as amended. Chester R. Bartalini, secretary of Respondent Council, Earl W. Honerlah, and Jack Weare, business representatives of Respondent Locals No. 162, and 1408, respectively, were, throughout the period with which this case is concerned, agents of the designated labor organizations, within the meaning of Section 8(b) and Section 2(13) of the Act, as amended.

3. By threats directed to general contractors Thomas J. Crosby and Virgil M. Frey that carpen-

ters in their employ on various residential construction projects would be "pulled" from such projects; by threats directed to general contractors Donald R. Downey and Frank Stewart that their residential construction projects would be picketed; and by verbal instructions, directions, appeals or threats to workmen employed by Disney, Crosby, Frey, and Stewart at their respective construction projects, respondent labor organizations, together with their designated agents: (1) induced or encouraged individuals employed by persons engaged in commerce, or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, and (2) threatened, coerced, or restrained persons engaged in commerce or an industry affecting commerce, for the purpose of forcing or requiring Wilber F. Disney to enter into agreements prohibited by Section 8(e) of the Act, as amended, and for the purpose of forcing or requiring Crosby, Frey, Downey and Stewart to cease doing business with Disney. Such a course of conduct, undertaken for the purposes stated, involved the commission of unfair labor practices within the meaning of Section 8(b)(4)(i)(ii) (A) and (B) of the Act, as amended.

4. By their establishment and maintenance of a picket line before Disney's San Carlos business premises for more than 30 days without a petition under Section 9(c) of the Act having been filed, with the object of forcing or requiring Disney to recognize

or bargain with Respondent District Council and Respondent Locals as representatives of Disney's employees, notwithstanding that these respondent labor organizations were not, and are not, currently certified as the representatives of such employees, Respondent District Council and Respondent Locals have committed an unfair labor practice within the meaning of Section 8(b)(7)(C) of the Act, as amended.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

RECOMMENDED ORDER

Upon these findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the Board, pursuant to Section 10(c) of the National Labor Relations Act, as amended, order that respondent labor organizations, Bay Counties District Council of Carpenters, AFL-CIO, Carpenters Union Local No. 162, AFL-CIO, Carpenters Union Local No. 828, and Carpenters Union Local No. 1408, together with their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducement or encouragement of any individual employed by Wilber F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of his employment, to use, manufacture, process, transport or otherwise handle

or work on any goods, articles, materials or commodities, or to perform any services—coupled with threats, coercion or restraint directed against Wilber F. Disney, the various general contractors designated, or any other person engaged in commerce or in an industry affecting commerce—where an object thereof is to force or require Wilber F. Disney to enter into an agreement proscribed by Section 8(e) of the Act, as amended, or to force or require the general contractors previously designated, or other persons, to cease doing business with Disney;

(b) Establishment or maintenance of a picket line at W. F. Disney's business premises in San Carlos, California, or causing such a picket line to be established or maintained, where an object thereof is forcing or requiring the designated employer to recognize or bargain with the respondent labor organizations as the representatives of his employees, in violation of Section 8(b)(7)(C) of the Act, as amended.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act, as amended:

(a) Post in conspicuous places at the business offices and meeting halls of the respondent labor organizations, and all places where notices to members are customarily posted, copies of the notice attached to this report as an Appendix.[1] Copies of the

[1]Should the Board adopt this decision, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. Further, should the Board's order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of

notice, to be furnished by the Regional Director for the Twentieth Region as the Board's agent, shall be posted, immediately upon their receipt, after being duly signed, on behalf of each respondent labor organization, by their duly designated representatives. Once posted they shall remain posted for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by respondent labor organizations to insure that these notices are not altered, defaced, or covered by any other materials;

(b) Sign and mail sufficient copies of the said notice to the Regional Director for the Twentieth Region for posting by Wilber F. Disney, Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, and Frank Stewart, these recipients willing, at all locations where notices to their employees are customarily posted;

(c) File with the Regional Director of the Twentieth Region, as the Board's Agent, within 20 days of the date of service of this decision, a written statement setting forth the manner and form in which it has complied with these recommendations.[2]

Dated: .....

Maurice M. Miller
Trial Examiner

Appeals Enforcing an Order" shall be substituted for the words "A Decision and Order" in said notice.

[2]Should the Board adopt this Recommended Order, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order, what steps respondent labor organizations have taken to comply herewith.

Appendix A

Notice

To all Officers, Representatives, Agents, and Members, and to all Employees of Disney Roofing and Material Company, Disney Cedar Supply Co., Inc., Carlmont Roofing Co., and Various General Contractors.

Pursuant To

The Recommendations of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, you are hereby notified that:

We Will Not induce or encourage employees of Disney Roofing and Material Company, Disney Cedar Supply Co., Inc., Carlmont Roofing Co., Thomas J. Crosby, Virgil M. Frey, Donald R. Downey, Frank Stewart, or any other employer engaged in commerce or an industry affecting commerce, to engage in any strike or refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, nor will we threaten, coerce, or restrain the persons designated, or any other person engaged in commerce or an industry affecting commerce where, in either case, an object thereof is to force or require Wilber F. Disney to enter into any agreement prohibited by Section 8(e) of the Act, as amended, or to force or require the general contractors designated, or any other persons, to cease doing business with Disney Roofing and Material Company, Disney Cedar Supply Co., Inc., and Carlmont Roofing Co.

We Will Not picket or cause a picket line to be established or maintained at the San Carlos, California, business premises of Disney Roofing and Material Company, Disney Cedar Supply Company, Inc., and Carlmont Roofing Company, respectively—with an object of forcing or requiring these business enterprises to recognize or bargain with us, or any other labor organization, as the representatives of their employees—contrary to the requirements of Section 8(b)(7)(C) of the Act, as amended.

Bay Counties District Council of Carpenters, AFL-CIO
(Labor Organization)

By.....
(Chester R. Bartalini, Secretary)

Carpenters Union Local No. 162, AFL-CIO
(Labor Organization)

By.....
(Earl W. Honerlah, Business Representative)

Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL-CIO

By.....
(Representative) (Title)

Carpenters Union Local No. 1408, AFL-CIO

By.....
(Jack Weare, Business Representative)

Dated: .....

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Members of the signatory labor organizations and employees may communicate with the Board's Regional Office, 450 Golden Gate Avenue, San Francisco, California (telephone No. 556-6721), if they have any questions concerning this notice or compliance with its provisions.

Appendix B

Exhibit "A"

Carpenters Agreement

San Francisco, San Mateo, Marin and Alameda Counties

June 16, 1962 to June 15, 1965

XIV. Contracting and Subcontracting

* * *

(b) The terms and conditions of this Agreement insofar as it affects an individual employer shall apply to any subcontractor, or his subcontractors, providing services for or working under contract with such an individual employer upon work covered by this Agreement, and such subcontractor, or his subcontractors, with respect to such work shall be considered as an individual employer subject to all of the terms of this Agreement, expressly including Sections XIII, XVII-A, XVII-B, XVII-C, XXI and XXII hereof. The remedies for default hereunder shall apply directly to the subcontractor, or his subcontractors, except that in the event a subcontractor or his subcontractor fails to make fringe benefit payments or contributions with respect to workmen employed by him pursuant to this Agreement on the project of a prime contractor or prime builder, such prime contractor or prime builder shall be liable to make such payments or contributions within ten days after such payment has been demanded in writing by the appropriate Fund office, provided such demand is received by the prime contractor or prime builder within 30 days after the applicable administrative office of the

applicable Trust Fund has transmitted a notice of delinquency to the parties, and shall be entitled to be reimbursed and indemnified therefor by the subcontractor. The provisions of this paragraph shall be effective at the expiration of 90 days from and after June 15, 1962.

XXI-A. Employees not to be Discharged for Recognizing Authorized Picket Lines

No employee covered hereby may be discharged by an individual employer for refusing to cross a picket line established by an International Union affiliated with the Building and Construction Trades Department of American Federation of Labor, or a Local Union thereof, which picket line has been authorized or sanctioned by the Local Building and Construction Trades Council having jurisdiction over the area in which the job is located and after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer at his address. This Section shall not apply to jurisdictional disputes.

Exhibit "B", Page 1

Northern California Standard
Building Trades Agreement

* * *

Section 2. This Agreement shall cover all work performed by Employer or for Employer by any third party, under contract or otherwise, within the jurisdiction of the Building and Construction Trades Depart-

ment and its subordinate bodies and within the Building and Construction craft jurisdiction of National and International Unions affiliated therewith and their subordinate bodies and the building and construction jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its subordinate bodies, including but not limited to, construction, alteration, painting, repair or demolition, of a building, structure or other works.

* * *

Section 7. The Employer agrees that he shall contract or subcontract work referred to in Section 2 hereof only to a person, firm, partnership or corporation that is party to an executed, current agreement with the Local Building and Construction Trades Council with jurisdiction over the job site or the appropriate Labor Organization referred to in Section 2 hereof having work and territorial jurisdiction in the area in which the work is performed.

Section 8. The Employer agrees that in the event he contracts or subcontracts any work referred to in Section 2 hereof there shall be contained in his contract with the contractor or subcontractor a provision that the contractor or subcontractor shall be responsible for the payment of all wages and fringe benefits provided under the Agreement with the appropriate Labor Organization referred to in Section 2 hereof covering the job site. In the event that any contractor or subcontractor fails to pay the wages or fringe benefits provided under the Agreement with the appropriate Labor Organization referred to in Section 2

hereof, the Employer shall become liable for the payment of such sums and such sums shall immediately become due and payable by the Employer, provided, however, he shall be notified of any such non-payment by registered letter by the appropriate Labor Organization or Trust no later than ninety (90) days after notice by such Labor Organization or Trust of such default or completion of the entire project.

Section 9. The parties hereto specifically agree that in the event of a violation of this Agreement, or other agreement incorporated by reference herein by Employer, Employer's Contractor or Contractors and any Subcontractor, the amount of damages sustained by such violation or breach would be impracticable or extremely difficult to fix by way of actual damages and therefore agree that the Employer shall pay to the Local Building Trades Council with jurisdiction over the area in which the job site is located as liquidated damages, the sum of Fifty ($50.00) Dollars for each such violation per employee involved for each day the violation continues, in addition to any moneys due any employee or for any employee benefits and in addition to any other special damages that may be established.

* * *

Exhibit "B", Page 2

Section 11. No employee covered hereby may be discharged or discriminated against (a) for refusing to pass an authorized picket line or (2) for refusing to work on a job site at which persons are employed on work covered hereby who are not work-

ing under a lawful contract with a Local Building and Construction Trades Council or with the appropriate Labor Organization referred to in Section 2 hereof.

* * *

Section 13. This contract may be enforced by the Signatory Council provided, however, in the event a dispute exists between Employer or any Contractor of Employer or any Subcontractor and any Local Council with jurisdiction over the job site or any Labor Organization referred to in Section 2 hereof, with jurisdiction at any job site, such Building and Construction Trades Council or Labor Organization may enforce this agreement.

Section 14. In the event of any violation of this agreement by Employer or Employers Contractor or Contractors or any Subcontractor, Employer agrees to pay any and all Attorneys' fees and expenses occasioned thereby or incurred in the enforcement of this Agreement.

* * *

Section 17. In the event that the Employer violates any provision of this Agreement or fails to abide by the determination as provided in Section 16 or in the event that any Contractor of the Employer or any Subcontractor fails to abide by the provisions of the appropriate agreement in the area of the job site, it will not be a violation of this Agreement for the Signatory Council to terminate this Agreement and it shall not be a violation of this Agreement for any employee to refuse to perform any work for or enter upon any premises of such Employer. Em-

ployees who refuse to perform any work or enter upon any premises under the circumstances shall not be subject to discharge or any other disciplinary action.

Section 18. The Employer further agrees that on all of his jobs he, all of his Contractors and all Subcontractors will abide by all local, State and Federal health, safety and sanitary regulations, and in the event that there are any conditions which may be or tend to be detrimental to the employee's health, safety, morals, or reputation, it is agreed that the employees shall not be required to work under such conditions. It is further agreed that no employee shall be required to cross any picket line or enter any premises at which there is a picket line authorized or approved by any Local Building and Construction Trades Council, or Labor Organization referred to in Section 2 hereof or Central Labor Body with jurisdiction over the area in which the job site is located. The Employer agrees that he will not assign or require any employee covered by this Agreement to perform any work or enter any premises under any of the circumstances above described.

Section 19. During the time of any violation of any of the provisions of this Agreement by the Employer, Employer's Contractor or any Subcontractor, the Local Building and Construction Trades Council, and Labor Organizations referred to in Section 2 hereof shall be released and relieved of any obligation to furnish workmen to any of them.

* * *

APPENDIX C

Pursuant to General Counsel's Motion to Correct Official Report of Proceedings, with respect to which no objections have been presented, the official transcript in this matter is, hereby, corrected in the following particulars:

1. Pages 13-15, 17-19, 20-31: Change the name "Stuart" to "Stewart".
2. Where the name "Honerlau" appears, change it to the correct spelling "Honerlah".
3. Page 77, line 15: Strike "(c)" and insert therefor "(7)(C)".
4. Page 133, line 20: Strike the words "you were" and insert therefor the words "Disney was".
5. Page 142, line 14: Strike the numbers "160" and insert therefor the numbers "162".
6. Page 254, line 23: Strike the word "did" and insert therefor the word "were"; after the word "you" insert the word "to".
7. Page 391, line 15: Strike the numbers "27" and insert therefor the numbers "17".
8. Page 455, line 18: Strike the word "three" and insert therefor the word "these".
9. Page 647, line 19: Strike "(a)" and insert therefor "(e)".

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 743

BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, AFL-CIO, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. i-iv) is not yet officially reported. The Board's decision and order (R. 185-197, 52-140)[1] are reported at 154 NLRB 1598.

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[1] "R." references are to the materials contained in Volume I of the record in the court of appeals; "Tr." references are to the transcript of testimony in Volume II of the record; "G.C. Exh." refers to the General Counsel's exhibits.

JURISDICTION

The opinion of the court of appeals was issued on July 21, 1967, and a decree was entered on August 2, 1967 (Pet. App. i, viii). The petition for a writ of certiorari was filed on October 19, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Section 8(e) of the National Labor Relations Act makes it an unfair labor practice for an employer and a labor organization to enter into an "express or implied" agreement whereby such employer undertakes to "cease doing business with any other person" (a so-called "hot cargo" clause). A clause in a proposed collective bargaining agreement prohibited a signatory employer from discharging an employee for refusing to cross a picket line. The question presented is whether the Board properly concluded that such a clause was barred by Section 8(e), since it covered not only picket lines which were "primary" and lawful, but also those which were "secondary" and thus violative of the Act's secondary boycott provisions.

STATUTE INVOLVED

Section 8(e) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519 (29 U.S.C. 151 *et seq.*), is set forth at pp. 4-5, n. 1, of the petition.

STATEMENT

Petitioner District Council, with which petitioner locals are affiliated, negotiates area-wide collective bargaining agreements (known as the "Four Bay Counties Carpenters' Master Agreements") with several employer associations. Petitioner Chester Bartalini is Secretary of the District Council and supervises the activities of the business agents of its constitutent locals (R. 187, 56-58; Tr. 142-146).

Wilbur F. Disney operates three commonly owned businesses engaged in the sale and installation of roofing materials (R. 186, 54; Tr. 306-308). In 1956 Disney signed a Master Agreement, and, although he did not sign subsequent ones, continued until 1962 to conform his labor policies to the current Master Agreements and to make contributions to the welfare funds provided for in those contracts (R. 186-176, 57-58; Tr. 150-1-150-3, 359-361, 529).

In August 1962 a new Master Agreement was negotiated by the District Council and the employer associations. The Master Agreement contained the following clause (R. 190; G.C. Exh. 7):

> XXI-A. EMPLOYEES NOT TO BE DISCHARGED FOR RECOGNIZING AUTHORIZED LINES
>
> No employee covered hereby may be discharged by an individual employer for refusing to cross a picket line established by an International Union affiliated with the Building and Construction Trades Department of American Federation of Labor, or a Local Union thereof, which picket line has been authorized or sanctioned by the Lo-

> cal Building and Construction Trades Council having jurisdiction over the area in which the job is located and after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer at his address. This Section shall not apply to jurisdictional disputes.

Disney refused to conform to the terms of the new Master Agreement, and instead entered into a collective bargaining agreement with District 50 of the United Mine Workers of America (R. 187; Tr. 150-1-150-4, 245-246, 359-362).

It is undisputed that, on July 18, 1963, petitioner labor organizations began picketing Disney's premises, for the purpose of forcing Disney to sign the current Master Agreement (R. 188-189, 61, 63-65; Tr. 138-140, 335-350, 358, 353-354, 361, 429-431; see Pet. 4). This picketing led to the filing of unfair labor practices against petitioners (Pet. App. ii-iii).

The Board found that Section XXI-A of the Master Agreement was unlawful under Section 8(e) of the Act because it "extends immunity from discharge to employees refusing to cross secondary picket lines" (R. 190). Since petitioners' picketing was designed to force Disney to enter into such an agreement, the Board further found that the picketing violated Section 8(b)(4)(A).[2] The Board's order, insofar as

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[2] Section 8(b)(4)(A) of the Act makes it an unfair labor practice for a union to force or require any employer "to enter into any agreement which is prohibited by section 8(e)."

here relevant,[3] directs petitioners to cease and desist from picketing or otherwise threatening or causing a work stoppage in order to force Disney to enter into the Master Agreement containing Section XXI-A as written (Pet. App. vi).

The court of appeals agreed with the Board that Section XXI-A of the Master Agreement is unlawful under Section 8(e) since "it allows an employee to refuse to cross a secondary picket line," and accordingly enforced the Board's order (Pet. App. iii-iv).

ARGUMENT

The decision of the court of appeals is clearly correct, and there is no conflict of decisions. Review by this Court is thus not warranted.

1. Absent a contract provision, an employer, so long as he is motivated by business considerations, may permanently replace employees who are unwilling to cross a picket line with those who are willing to do so, and thereby discharge the former.[4] By

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[3] The Board found other violations of Section 8(b)(4) which are not challenged here (R. 189-190; see Pet. 5). The Board also found that another clause in the Master Agreement involving the subcontracting of work did not violate Section 8(e), for, since it was limited to work to be performed on the job site, it was privileged under the construction industry proviso to Section 8(e). (R. 191-192; see *infra*, pp. 9-10).

[4] See *Redwing Carriers*, 137 NLRB 1545, 1547, affirmed *sub nom. Teamsters Local Union No. 79* v. *National Labor Relations Board*, 325 F. 2d 1011 (C.A. D.C.), certiorari denied, 377 U.S. 905; *National Labor Relations Board* v. *L.G. Everist, Inc.*, 334 F. 2d 312, 317 (C.A. 8); cf. *National Labor Relations Board* v. *Cone Brothers Contracting Co.*, 317 F. 2d 3 (C.A. 5), certiorari denied, 375 U.S. 945.

denying or inhibiting an employer's right to replace employees who refuse to carry out their assigned duties, a picket line clause, such as the one involved here, in effect requires the employer to agree to cease doing business with the person whom the union is picketing. Such a clause thus falls within the literal prohibition of Section 8(e) (see Pet. 4-5, n. 1).

Of course, Section 8(e), and the companion Section 8(b)(4)(B), interdict only secondary and not primary agreements and activity. *National Woodwork Mfrs. Ass'n* v. *National Labor Relations Board*, 386 U.S. 612. Since refusals to cross a picket line at the premises of the employer with whom the union has a primary dispute are a normal incident of such activity,[5] a picket line clause limited to primary picket lines may properly be deemed to fall outside the purview of Section 8(e).[6] But, insofar as a picket line clause would protect refusals to cross a picket line at the premises of a neutral or secondary employer, it is subject to the prohibition of Section 8(e). "Refusal to cross that line would itself be secondary activity. To the extent that the clause would protect such refusal to cross, it would then be authorizing a secondary strike and would *pro tanto* be void under § 8(e) of the Act." *Truck Drivers Union Local No. 413* v. *National Labor Relations Board*, 334 F. 2d 539, 543 (C.A. D.C.), certiorari denied, 379 U.S. 916.

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[5] See *United Steelworkers* v. *National Labor Relations Board*, 376 U.S. 492.

[6] See *Truck Drivers Union Local No. 413* v. *National Labor Relations Board*, 334 F. 2d 539, 544-545 (C.A. D.C.), certiorari denied on other issues, 379 U.S. 916.

Since the picket line clause in this case covers any authorized "picket line established by an International Union affiliated with the Building and Construction Trades Department of American Federation of Labor, or a Local Union thereof" (*supra*, p. 3), its terms are broad enough to encompass not only primary but also secondary picket lines.[7] Accordingly, the Board and the court below properly concluded that the clause exceeded the limits of a permissible picket line provision and was thus violative of Section 8(e). Moreover, this conclusion is consistent with that reached in other cases involving the same type of clause. *Truck Drivers Union Local No. 413* v. *National Labor Relations Board*, *supra*, 334 F. 2d at 543; *Drivers, Salesmen, etc., Local Union No. 695* v. *National Labor Relations Board*, 361 F. 2d 547, 551 (C.A.D.C.); *National Labor Relations Board* v. *Lane-Coos-Curry-Douglas Counties Bldg. & Constr. Trades Council*, No. 20,783, C.A. 9, August 9, 1966 (unreported), enforcing 155 NLRB 1115.

2. Petitioners seek to distinguish the prior cases on the ground that the clauses there involved sought to protect the employees who refused to cross a picket line against both discharge and lesser forms of discipline, while the clause here, which covers only discharge, leaves the employee vulnerable to other discipline. Petitioners argue that, since Section XXI-A does not give the employee who refuses to cross a picket line a total immunity from employer discipline,

[7] By its terms the clause excepts only "jurisdictional disputes" (*supra*, p. 4).

it must follow that the clause is aimed at "protecting individual refusals, not Union-induced refusals" (Pet. 9). Upon scrutiny, it is plain that this contention lacks merit. Even if it be assumed *arguendo* that the object of the picket line clause was to protect "individual rights" and that the prior cases are thus in some respects distinguishable,[8] that object cannot be accomplished in a manner which runs afoul of the Act. Although individual employees may have a right to decide for themselves not to handle certain goods or service certain companies, their employer has the correlative right to replace them with other employees who will do that sort of work. The picket line clause here, by depriving the employer of this choice where secondary as well as primary picket lines are involved, goes beyond protection of the rights of the individual employees and compels the contracting employer to cease doing business with employers disfavored by the union. It is the policy of Section 8(e) to prohibit contractual arrangements between the union and the employer that commit the latter to such a response.

3. There is similarly no substance to petitioners' contention (Pet. 10-12) that the Board improperly applied a *per se* rule and presumed illegality in finding that the picket line clause here involved covered secondary picket lines. The terms of the clause itself

[8] After citing these cases in support of its conclusion that the Board's ruling was correct, the court of appeals stated that "[t]he critical contract language involved in the cited cases differs from that of the contract here in issue, but the purport is the same" (Pet. App. iv).

are virtually without limit and would clearly cover secondary, no less than primary, picket lines. The cases relied on by petitioners are distinguishable.[9] Nor is there any inconsistency between the Board's failure to imply a qualification in the picket line clause and its action in construing the subcontracting provision of the agreement as being limited to jobsite work even though that limitation was not expressly stated (Pet. 12).[10] The Board found that, when read

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[9] In *National Labor Relations Board* v. *News Syndicate Co.*, 365 U.S. 695, the bylaw provision in question specifically provided that "only those General Laws of the union are incorporated which are 'not in conflict with this contract or with federal or state law' "; any "rule or regulation of the union which permitted or required discrimination in favor of union employees would, therefore, be excluded from incorporation in the contract since it would be at war with the Act" (*id.* at 700). And, in *Local 357, Teamsters* v. *National Labor Relations Board*, 365 U.S. 667, the challenged hiring-hall provision specifically recited that an employee was eligible for referral "irrespective of whether such employee is or is not a member of the Union" (*id.* at 668); as the Court observed (*id.* at 676): "Nothing is inferable from the present hiring-hall provision except that employer and union alike sought to route 'casual employees' through the union hiring hall and required a union member who circumvented it to adhere to it."

[10] Section XIV(b), the subcontracting clause of the Master Agreement, provided in relevant part (R. 187, n. 4):

> (b) The terms and conditions of this Agreement insofar as it affects an individual employer shall apply to any subcontractor, or his subcontractors, providing services for or working under contract with such an individual employer upon work covered by this Agreement, and such subcontractor, or his subcontractors with respect

in the light of other provisions of the agreement which were limited to jobsite work, it was evident that the parties intended the subcontracting clause to be applicable only to such work, and that the evidence in the record as to its application confirmed that conclusion (R. 191-192). No similar basis exists for inferring that the parties intended to limit the picket line clause to primary picket lines.

4. Finally, there is no substance to petitioners' contention (Pet. 12) that the picketing could not be found violative of Section 8(b)(4)(A) (see note 2, *supra*), since there was no showing that either Disney or any other employer actually executed the Master Agreement with the illegal picket line clause within the six-month period of limitation on the filing of unfair labor practice charges prescribed by Section 10(b) of the Act.[11] Section 8(b)(4)(A) does not of

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to such work shall be considered as an individual employer subject to all the terms of this Agreement * * *.

Although this clause in effect barred an employer covered by the Master Agreement from subcontracting to persons who did not comply with the terms of that agreement, the Board, in the light of the circumstances set forth above, concluded that the limitation was applicable only to work to be performed on the job site. Hence, the clause was privileged under the first proviso to Section 8(e), which exempts from the ban of that section "an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work * * *."

[11] Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than

necessity require a consummated agreement before activity can be unlawful under its provisions; obviously it is aimed as well at *attempts* to secure an agreement which, if executed, would violate Section 8(e). Thus, "picketing with an object of forcing Disney to enter [into] a contract containing a clause prohibited by section 8(e) * * *" (Pet. App. iii) could properly be held to constitute a violation of Section 8(b)(4)(A) without regard to whether Disney or any other employer had in fact signed such an agreement.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made * * *."

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